Also, a bill (H. R. 11175) granting an increase of pension to Dedrick Beckman—to the Committee on Invalid Pensions.

By Mr. KRONMILLER: A bill (H. R. 11176) granting an increase of pension to Albert M. Butts, alias Albert Stewart—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11177) granting a pension to Augusta R. Laengraef—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11178) granting an increase of pension to James Disney—to the Committee on Pensions.

Also, a bill (H. R. 11179) granting an increase of pension to Sarah E. Marsh—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11180) for the relief of Julia Nolan, administratrix—to the Committee on War Claims.

Also, a bill (H. R. 11181) for the relief of Julia Nolan—to the Committee on War Claims.

By Mr. LEVER: A bill (H. R. 11182) granting a pension to James V. Smith—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11183) granting a pension to Stanmore Y. Morris—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11184) granting a pension to William Preston Raines—to the Committee on Invalid Pensions.

By Mr. LOVERING: A bill (H. R. 11185) granting a pension to Albina A. Cram—to the Committee on Invalid Pensions.

By Mr. NEEDHAM: A bill (H. R. 11186) granting an increase of pension to John Wesley Tilley—to the Committee on Pensions.

By Mr. OLDFIELD: A bill (H. R. 11187) granting an increase of pension to Harmon Varner—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11188) granting an increase of pension to Benjamin J. Matteson—to the Committee on Invalid Pensions.

By Mr. A. MITCHELL PALMER: A bill (H. R. 11189) to remove the charge of desertion from the record of Isaac Miller—to the Committee on Military Affairs.

By Mr. STERLING: A bill (H. R. 11190) granting a pension to Charles F. Brown—to the Committee on Pensions.

Also, a bill (H. R. 11191) granting a pension to George W. Gregory—to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. CARTER: Petition of Oklahoma Traffic Association, of Guthrie, favoring decision of Interstate Commerce Commission as to rates and charges by coastwise vessels in the carrying trade—to the Committee on Interstate and Foreign Commerce.

Also, petition of United Mine Workers of Oklahoma, for a duty on crude oil of not less than present countervailing duty—to the Committee on Ways and Means.

By Mr. FOCHT: Petition of Washington Camp, No. 487, Patriotic Order Sons of America, of Elliottsburg, Pa., favoring abrogation of extradition treaty with Russia—to the Committee on Foreign Affairs.

By Mr. HANNA: Petition of citizens of Hillsboro, against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. KELIHER: Petition of Boston Chamber of Commerce, against law to tax earnings of corporations—to the Committee on Ways and Means.

By Mr. LOVERING: Petition of Boston Chamber of Commerce, against a federal tax on earnings of corporations—to the Committee on Ways and Means.

By Mr. McCALL: Petition against the increased tariff rates contemplated by the Payne and Aldrich bills, with 2,938 indorsements, from the following towns in Massachusetts: Acton, Amesbury, Amherst, Andover, Arlington, Ashland, Barnstable, Belmont, Billerica, Boston, Braintree, Bridgewater, Brockton, Brookline, Cambridge, Canton, Chelsea, Clinton, Dedham, Deerfield, Dover, Easthampton, Easton, Everett, Fitchburg, Foxboro, Greenfield, Groton, Hadley, Haverhill, Hingham, Holyoke, Hopedale, Hopkinton, Hyde Park, Ipswich, Lancaster, Lawrence, Leicester, Lexington, Littleton, Lowell, Lynn, Malden, Mansfield, Marlboro, Medford, Melrose, Mendon, Merrimac, Milford, Milton, Nahant, Needham, Newburyport, Newton, North Adams, Pepperell, Plymouth, Provincetown, Quincy, Reading, Revere, Sharon, Shelburne, Somerville, South Hadley, Spencer, Springfield, Stockbridge, Stoneham, Stoughton, Stow, Sunderland, Swampscott, Townsend, Upton, Wakefield, Waltham, Wareham, Watertown, Wayland, Westfield, Westford, Weston, Weymouth, Whitman, Winchendon, Winchester, Winthrop, Woburn, Worcester, Worthington, and Wrentham—to the Committee on Ways and Means.

By Mr. NEEDHAM: Petition of Merchants' Association of San Francisco, Cal., approving the act entitled "An act concerning baggage and excess baggage carried by common carriers in the District of Columbia and Territories," etc.—to the Committee on Interstate and Foreign Commerce.

Also, petition of park commissioners of San Francisco, Cal., favoring appropriation of $500,000 for a new marine hospital in San Francisco, Cal.—to the Committee on Public Buildings and Grounds.

By Mr. OLDFIELD: Paper to accompany bill for relief of Samuel Crowley—to the Committee on Invalid Pensions.

By Mr. PATTERSON: Paper to accompany bill for relief of Ernest E. Pearsall—to the Committee on Pensions.

By Mr. WEISSE: Petition of sundry women of Wisconsin, against increase of duty on women's gloves—to the Committee on Ways and Means.

SENATE.

FRIDAY, *July 2, 1909.*

The Senate met at 10 o'clock a. m.

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of the Hamilton County League of Building Associations, of Ohio, praying that that association be exempted from the provisions of the proposed corporation-tax amendment to the pending tariff bill, which was ordered to lie on the table.

Mr. JONES. I present a telegram from the Spokane Merchants' Association, of Washington, which I ask may be read.

There being no objection, the telegram was read, and ordered to lie on the table, as follows:

SPOKANE, WASH., *July 1, 1909.*

WESLEY L. JONES,
United States Senator, Washington, D. C.:

The Spokane Merchants' Association, comprising 106 of the wholesale and manufacturing firms of Spokane, request you to support the measure proposed by President Taft providing for a tax on the earnings of corporations. We consider it superior to the Bailey income-tax amendment because it safeguards the private information of business institutions, and we believe the Bailey law will be inimical to the best interests of the State of Washington.

SPOKANE MERCHANTS' ASSOCIATION,
Per BOARD OF TRUSTEES.

Mr. CHAMBERLAIN. In connection with the telegram just read, I present two telegrams, one from W. B. Ayer, of Portland, Oreg., and the other from the Inman Poulsen Lumber Company, of East Portland, Oreg., which I ask may be read.

There being no objection, the telegrams were read, and ordered to lie on the table, as follows:

PORTLAND, OREG., *June 29, 1909.*

Hon. GEORGE E. CHAMBERLAIN,
Washington, D. C.:

I heartily favor a national income tax, considering it the fairest and most equitable form of taxation, but consider the proposed corporation tax extremely unfair, as it places the burden only on the great industrial life of the country.

W. B. AYER.

EAST PORTLAND, OREG., *June 29, 1909.*

Hon. GEORGE E. CHAMBERLAIN,
United States Senate, Washington, D. C.:

We trust you will do your best to kill that proposed pernicious corporation tax.

INMAN POULSEN LUMBER COMPANY.

Mr. PILES. I present a telegram from the Chamber of Commerce and Board of Trade, of Tacoma, Wash., which I ask may be read.

There being no objection, the telegram was read, and ordered to lie on the table, as follows:

TACOMA, WASH., *July 1, 1909.*

Hon. S. H. PILES,
Senator, Washington, D. C.:

We favor administration corporation tax as a temporary revenue measure, and as a means of quickly disposing of the tariff debate.

TACOMA CHAMBER OF COMMERCE AND BOARD OF TRADE.

Mr. PERKINS presented telegrams in the nature of memorials of sundry citizens of San Francisco, Cal., remonstrating against the adoption of the so-called "Bailey-Cummins income-tax amendment" to the pending tariff bill, which were ordered to lie on the table.

Mr. NELSON presented a memorial of the Commercial Club of Minneapolis, Minn., remonstrating against the adoption of the so-called "corporation-tax amendment" to the pending tariff bill, which was ordered to lie on the table.

He also presented sundry affidavits to accompany the bill (S. 1887) granting an increase of pension to Charles Heathfield, which were referred to the Committee on Pensions.

Mr. DEPEW presented a petition of General Lawton Council, No. 119, Junior Order of United American Mechanics, of Brooklyn, N. Y., praying for the adoption of the so-called "Overman amendment" to the pending tariff bill relative to an increase of the head tax on immigrants, which was ordered to lie on the table.

PHILIPPINE TARIFF BILL.

Mr. HEYBURN. I am directed by the Committee on the Philippines, to whom was referred the bill (H. R. 9135) to raise revenue for the Philippine Islands, and for other purposes, to report it with amendments, and I submit a report (No. 9) thereon. I would say that the report is very lengthy.

The VICE-PRESIDENT. The bill will be placed on the calendar.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BRADLEY:

A bill (S. 2805) granting an increase of pension to William H. O'Dean; to the Committee on Pensions.

By Mr. BURNHAM:

A bill (S. 2806) granting a pension to Susan R. Potter; and

A bill (S. 2807) granting a pension to Ariadne A. Eastman; to the Committee on Pensions.

By Mr. BORAH:

A bill (S. 2808) granting an increase of pension to David Sutherland;

A bill (S. 2809) granting an increase of pension to Amos W. Melugin;

A bill (S. 2810) granting an increase of pension to Recorder M. Mudgett;

A bill (S. 2811) granting an increase of pension to Volney H. Maxwell;

A bill (S. 2812) granting an increase of pension to William Thomas (with accompanying paper);

A bill (S. 2813) granting a pension to William E. White (with accompanying paper);

A bill (S. 2814) granting an increase of pension to Andrew J. Leonard (with accompanying paper);

A bill (S. 2815) granting an increase of pension to Amos Lee (with the accompanying paper);

A bill (S. 2816) granting an increase of pension to Wilson Hoag (with the accompanying papers);

A bill (S. 2817) granting an increase of pension to Albert Kalt (with the accompanying paper);

A bill (S. 2818) granting an increase of pension to Constantine C. Glenn (with the accompanying paper);

A bill (S. 2819) granting an increase of pension to A. Lee Ewing (with the accompanying paper);

A bill (S. 2820) granting an increase of pension to Shepard D. Edwards (with the accompanying paper);

A bill (S. 2821) granting an increase of pension to Gillis J. McBane (with the accompanying paper);

A bill (S. 2822) granting an increase of pension to William Reynolds (with the accompanying paper);

A bill (S. 2823) granting an increase of pension to Aaron Richardson (with the accompanying paper);

A bill (S. 2824) granting a pension to Corrilla J. Robbins (with the accompanying paper);

A bill (S. 2825) granting a pension to James M. Woods (with the accompanying paper); and

A bill (S. 2826) granting an increase of pension to Benjamin F. Boots (with the accompanying paper); to the Committee on Pensions.

AMENDMENTS TO THE TARIFF BILL.

Mr. DICK submitted two amendments intended to be proposed by him to the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes, which were ordered to lie on the table and be printed.

CLAIMS OF KENTUCKY SOLDIERS.

Mr. BRADLEY. I submit a resolution and ask immediate action upon it. It is for the benefit of the Court of Claims, to enable the court to arrive at some definite conclusion.

The resolution (S. Res. 63) was read, as follows:

Senate resolution 63.

Resolved, That the Secretary of War be, and he is hereby, requested to report to the Senate a full history of the drafts in the State of Kentucky during the civil war, with a statement of facts and orders relating thereto and showing the number of men actually credited to the State and to each county of the State, at the time of the drafts, and the number of men with which each county should have been credited if a proper distribution of credits had been made before the drafts were ordered or put into execution, and the number of men drafted who furnished substitutes or paid commutation money from each county of the State, and such other information concerning quotas and credits as to clearly show the number of citizens of Kentucky drafted in 1864 who would not have been drafted had the redistribution of credits, as ordered in April, 1864, been made prior to said drafts.

Mr. KEAN. I do not object to the resolution. I suppose that the information is contained in the department, and can be very easily gotten together and sent here.

Mr. BRADLEY. If that had been true I would not have introduced the resolution. The Court of Claims has called on the War Department for this information, and the War Department submitted a lot of conclusions of fact instead of reporting the facts themselves. The court does not feel warranted in acting upon conclusions of fact, but wants to have the facts distinctly stated. The resolution is introduced at the instance of the Court of Claims.

Mr. KEAN. Is it for the purpose of establishing claims before the Court of Claims?

Mr. BRADLEY. It is for the purpose of enabling the court to know the facts in regard to these claims.

Mr. KEAN. I have no objection to the resolution.

The Senate, by unanimous consent, proceeded to consider the resolution.

Mr. GALLINGER. I suggest to the Senator that the word "directed" should be substituted for the word "requested," which is the usual form in addressing heads of departments.

Mr. BRADLEY. I accept that.

Mr. GALLINGER. The clerks at the desk can make that amendment.

The VICE-PRESIDENT. The resolution will be so modified. The question is on agreeing to the resolution as modified.

The resolution as modified was agreed to.

THE TARIFF.

The VICE-PRESIDENT. The morning business is closed, and the first bill on the calendar will be proceeded with.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

Mr. HEYBURN. Mr. President, I suggest the absence of a quorum.

The VICE-PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Aldrich	Clapp	Gallinger	Penrose
Bacon	Clark, Wyo.	Heyburn	Perkins
Bailey	Crawford	Johnson, N. Dak.	Piles
Borah	Culberson	Jones	Root
Bradley	Cullom	Kean	Scott
Brandegee	Cummins	La Follette	Smoot
Briggs	Davis	Lodge	Stone
Bristow	Depew	McCumber	Sutherland
Brown	Dick	McLaurin	Taliaferro
Burkett	Dillingham	Nelson	Warner
Burnham	Dixon	Nixon	Wetmore
Burrows	Fletcher	Overman	
Chamberlain	Flint	Page	

The VICE-PRESIDENT. Fifty Senators have answered to the roll call. A quorum of the Senate is present.

Mr. HEYBURN. Mr. President, it is not my intention this morning to do more than complete the consideration of the question that was pending at the time of the adjournment yesterday. I do not see the Senator from New York [Mr. ROOT] in the Chamber. I saw him here a few moments ago.

The VICE-PRESIDENT. He was just called out of the Chamber.

Mr. KEAN. If the Senator from Idaho desires to wait for the Senator from New York, will he allow me to have read a letter from the president of the Mutual Benefit Life Insurance Company, of Newark, N. J.?

Mr. HEYBURN. I yield to the Senator from New Jersey for that purpose.

Mr. KEAN. I ask to have the letter read which I send to the desk.

The VICE-PRESIDENT. Without objection, the Secretary will read as requested.

The Secretary read as follows:

THE MUTUAL BENEFIT LIFE INSURANCE COMPANY,
OFFICE OF THE PRESIDENT,
Newark, N. J., June 28, 1909.

Hon. JOHN KEAN,
United States Senate, Washington, D. C.

DEAR SENATOR KEAN: I beg to call your attention to the evidently unfair distinction in the corporation-tax law as proposed between ordinary corporations not organized for profit and mutual life insurance companies likewise not organized for profit.

When one realizes that the entire benefit of such a mutual life insurance company—one incorporated but having no capital stock and paying no dividends or profits to the incorporators—goes to the policy holders, and such policy holders are, to a very large extent, holders of $1,000 of insurance, and to such an extent that the average policy in this company is about $2,300, it will be seen that this law does not

strike at aggregated capital, but at the life savings of the most thrifty people, and of the most modest means.

When such mutual life insurance companies are said to pay dividends you, of course, are aware that the so-called "dividends" are merely a return to the policy holder of such premium charged or collected as has been found to be superfluous—to have been saved by the economy of the management of the company. To impose this tax means that the provision these modest people are making for their families when the insured is no longer able to provide for them is to be assessed annually 2 per cent, for such return premium or dividends are arrived at in very much the same way as the balance of income is reached by this proposed law on which the tax is so laid.

There appears no reason for taxing the poor man's provision for his family against the future, any more or as much as taxing savings-bank deposits, properly not included in the proposed law. A thoroughly mutual company has no profit, the entire income going out thus:

Expense of maintaining and conducting the business, including taxes.
Paying the losses sustained over and above the reserve.
Making annual provision for the reserve.
Return premium to each policy holder, annually.

The aggregation of a large insurance company appears to be an accumulation of wealth, but all its wealth is subject to almost equal liabilities, and all its profit has to be returned to the policy holders.

Life insurance companies now are required to pay taxes of 2 per cent or so on their premium receipts in the States in which they do business, and while the New York Evening Post says this law allows such tax to be deducted from the government 2 per cent tax, it is in error. The law allows such tax levied by any state law to be deducted from the gross income, and not from this 2 per cent tax of the proposed law, so that this will be an additional tax on the companies.

We can not see why an insurance company not organized for profit should be taxed, while other similar companies are exempt, and we wish to earnestly protest against such legislation.

Yours, very truly,

FREDK. FRELINGHUYSEN, *President.*

Mr. KEAN. I merely desired to have put in the RECORD that protest against the proposed legislation.

The VICE-PRESIDENT. It will go into the RECORD, having been read.

Mr. HEYBURN. Now, Mr. President, I desire the attention of the chairman of the committee, and I would be glad to have the attention of the Senator from New York, because what I have to say about this matter this morning goes to the question of its validity, and we must be responsible here for our own judgment. We can not substitute that of the officers of any department for our own.

I stated last evening that in my judgment this amendment is as defective and is subject to the same objection as the former income-tax provision in regard to which the Pollock case was rendered. I am going to occupy but a few brief moments, and during that time I shall try to have the attention of those who will be responsible for the form of this legislation. The proposed amendment contains exactly the same defects that were contained in the income-tax provision that was held to be unconstitutional, and it will have the same fate. Whether that is to be desired or not, of course, is an individual question. I, of course, am bound to give the committee credit for the desire to pass a measure that will stand. I have given this matter enough attention to entitle my views to be heard and considered.

I shall state the point very succinctly. The chairman of the committee was not present yesterday at the close of the session when I pointed out the fact that the language in lines 10 and 11, page 1, taken in connection with the language in line 9, page 2, contains the exact identical principle that was held to be in violation of the Constitution, and upon thorough consideration I am satisfied that no lawyer will have any doubt upon this question.

I was asked last night by the Senator from New York what change I would suggest in this language. At that time I was on my feet and I did not care to take the responsibility of suggesting a change without more deliberation. I am prepared to make the suggestion this morning.

On page 1, lines 10 and 11, the words "with respect to" should be stricken out. They are not words of legislation. They have never been used in any bill upon any subject and they are not appropriate words for the conferring of power to do anything.

Mr. McCUMBER. In what line?

Mr. HEYBURN. In lines 10 and 11, the words "with respect to" are not apt legislative language, and have no meaning that is sufficiently definite for the court to give it any meaning.

Mr. KEAN. What would you put in place of it?

Mr. HEYBURN. I am going to suggest a word. First, I am going to say again that it is language that is not only improper, but destructive of the purpose of this measure; and I am quite sure the committee does not desire to pass a measure here merely to have it knocked out. That language must be taken in connection with the language in line 9, page 2, "and capital invested." There is the whole principle of the income tax. That is the virus in those words that was held to render it inoperative. The language of the income tax was:

That from and after the 1st day of January, 1895, and until the 1st day of January, 1900, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States.

Those were appropriate words. In the language of the legislation in the Hylton case equivalent words were used. It says:

Be it enacted, etc., That there shall be levied, collected, and paid upon all carriages for the conveyance of persons which shall be kept by or for any person, for his or her own use, or to be let out to hire, or for the conveying of passengers, the several duties and rates following, to wit.

That is definite. Compare that with this language. It means nothing, and the court would hold it to mean nothing. After the preliminary language, enumerating the corporations, it reads "shall be subject to pay annually a special excise tax with respect to." That is not legislative language. It is the language, by reference, that was used by the court in speaking of a measure. It has nothing to do with the proper legislative phrase at all. It is absolutely defective and exceptional, and has never been held otherwise. It is too serious a matter——

Mr. McCUMBER. Would the Senator substitute the word "for?"

Mr. HEYBURN. I was about to suggest language. In the amendment I shall propose to strike out those words down to and including the word "the" in line 11 and substitute the word "for," and you will then have overcome that difficulty. If you do not do it——

Mr. ALDRICH. How will it then read?

Mr. HEYBURN. It will read "shall pay annually a special excise tax for carrying on." That is what we are taxed for. That takes the virus out of it. You say here "and capital invested." That brings it right squarely within the rents and profits decision. There is the statement of the case. They have held that it is a direct tax if it is for rents, issues, or profits on real estate. It is too important a matter to pass over.

Mr. GALLINGER. The Senator from New York is now here.

Mr. HEYBURN. I see that the Senator from New York is now here.

Mr. SUTHERLAND. I was out of the Chamber when the Senator from Idaho began his remarks. I understand that he objects to the phrase "with respect to" in this proposed amendment.

Mr. HEYBURN. "With respect to the carrying on or doing business."

Mr. SUTHERLAND. What harm does the Senator see in the use of the words?

Mr. HEYBURN. In the first place, they are not a legislative phrase, and they are too indefinite. "With respect to" might mean license; it might mean an income tax; it might mean a revenue tax. It is in respect to, without any application or limitation. It is too general. In respect to a thing might mean any one of a thousand things.

Mr. SUTHERLAND. Those are the precise words used by the Supreme Court in characterizing the sugar tax.

Mr. HEYBURN. The court might say with respect to the question involved in this case, with respect to the statement in the act of Congress, with respect to anything. Those are words of description and have no place in legislation.

Mr. SUTHERLAND. Does the Senator think that the Supreme Court in using that language did not accurately describe the law which had been passed by Congress?

Mr. HEYBURN. They were not attempting to describe it except to identify it. They were words of identification.

Mr. SUTHERLAND. They used it as characterizing the law. The suggestion I desire to make is that if the Supreme Court was correct in the use of this language in characterizing the law, certainly Congress can not be incorrect in using the same words in the law itself.

Mr. HEYBURN. The Senate should be first sure by reference, and very accurate reference, as to the sense in which the Supreme Court did use that language. They had to identify the subject of their consideration, and that is all they did.

Mr. BRANDEGEE. Mr. President, I agree entirely with the suggestion of the Senator from Idaho that the words "with respect to" are without any signification whatever.

Mr. HEYBURN. Or limitation.

Mr. BRANDEGEE. They are vague and nebulous, and nobody can tell what the meaning is.

Mr. BORAH. Was that the object of using it?

Mr. HEYBURN. Now, that is another question.

Mr. BRANDEGEE. I will say that——

Mr. HEYBURN. I would not like to indorse by my silence that suggestion, with all due deference to my colleague. I do not believe the committee purposely indulged in the use of language that would defeat the object of the legislation.

Mr. BORAH. I did not mean that.

Mr. HEYBURN. I do not think the Senator did.

Mr. BORAH. But I do mean to say that it is impossible to get down to definite, specific language without running against the decisions which they are seeking to avoid.

Mr. BRANDEGEE. I have not finished the suggestion I wish to make. I want to call the attention of the Senator from Idaho to the fact that the language "in respect to" or "in reference to" has been the language of the court concerning legislative acts, but the act of 1898 itself contains no such language, but it did impose the tax. I quote the act from the decision in the Spreckels case: It "shall be subject to pay annually a special excise tax equivalent to one-fourth of 1 per cent on the gross amount of all receipts." It did not have anything to say about "in respect to" or "in reference to." It was a tax on gross receipts.

Mr. HEYBURN. Does the Senator from Utah desire to say more? He was interrupted.

Mr. SUTHERLAND. No; I completed what I had to say.

Mr. HEYBURN. I was proceeding to point out this objection. It will be readily seen. If the Senator from Rhode Island will pardon me, it is a matter of such importance that I think the committee should give it their attention, because otherwise they may find that they have made a mistake.

This covers the exact item that was taken by the Supreme Court, "and capital invested;" that is to say, this amendment provides that it shall pay 2 per cent per annum upon the amount of net income over and above $5,000 received by it from business transacted. That is an income tax—"and capital invested." I know, and the Senator knows, of a dozen companies whose pure and sole business is the owning of real estate and the collecting of rents and profits. The Supreme Court of the United States, in the Pollock case, says those rents, issues, and profits that are taxed are a direct tax. You can not get away from it. You might just as well run up against the status of this question in the Supreme Court of the United States on the income tax, as proposed by certain Senators, as to run up against it on that provision, because you fall down just as sure as you go there. That is the very item upon which that case turned—as to whether or not rents collected upon real estate were the subject of a direct or indirect tax—and they held in unequivocal language that it was a direct tax, because a tax upon the land was a direct tax, and consequently a tax upon the rents was a direct tax. There is not a lawyer or a layman in this body who will controvert that proposition. You have written it right into the face of this measure in unqualified terms, within the description contained upon the first page. Take those two together and they both will go down just like a snowball in the sunshine in the Supreme Court; and I do not believe that the committee desires that.

Mr. NELSON. Mr. President——

The PRESIDING OFFICER (Mr. DEPEW in the chair). Does the Senator from Idaho yield to the Senator from Minnesota?

Mr. HEYBURN. Certainly.

Mr. NELSON. The Supreme Court in the Pollock case excepted the tax that was sought to be imposed in this case. Let me call your attention to the following language of Chief Justice Fuller in the final rehearing of the case. Here is what he states, and it fits this case exactly.

Mr. KEAN. On what page?

Mr. NELSON. On page 635.

We have considered the act—

That is, the income tax—

We have considered the act only in respect of the tax on income derived from real estate and from invested personal property and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such.

That shows that even in that case the Supreme Court distinguishes between what are known as incomes from real and personal property and the profits of carrying on a particular business. Now, the amendment proposes not to levy upon the income, but to levy on the business or privilege of carrying on business as a corporation; and it comes within the exception of the Supreme Court in the Pollock case.

Mr. HEYBURN. I should like to ask the Senator how he knows what it refers to or what knowledge he can have gathered from the words "with respect to." The Senator overlooks the basis of the objection. Why does it say so here, then? I am only proposing there to add the word "for" and point the application.

Mr. NELSON. The language is, "With respect to the carrying on or doing business by such corporation."

Mr. HEYBURN. In what respect? As to its size, width, height, or continuance? "With respect to" is not a legislative term. It is a term to be used in describing a thing or referring to it. The Supreme Court in the Pollock case, instead of holding as the Senator has suggested, held what I shall read. I am not going to read at any length from these decisions; they are very familiar. The court says:

Being of opinion that so much of the sections of this law as lays a tax on income from real and personal property is invalid, we are brought to the question of the effect of that conclusion upon these sections as a whole.

Then they proceed to dispose of the entire legislation, because that was the question involved.

Now, what is the use of running against a statement like that in legislation, when you can avoid it by a change of the language limiting it to the subject of legislation? I think I have done my full duty in pointing this matter out, and it is for the committee and for the Senate to do their duty.

Mr. ALDRICH. This language has been passed upon by a large number of distinguished lawyers, and the committee supposed that it was bombproof.

Mr. HEYBURN. If the honorable Senator will permit me, the language of the income-tax law that the court passed upon in the Pollock case had been passed upon by, at that time, the most distinguished lawyers in the country. I sat there and heard the arguments in that case.

Having just finished arguing a case before that court on that day, they took it up and I said: "I want to hear how great lawyers present great issues in that court." So I followed them through; I heard Mr. Carter and I heard Mr. Choate and I heard all of them make their arguments, some on one side and some on the other. Mr. Carter, on behalf of the Government of the United States, took the position the court said was not sound. As the Senator, with his long business experience knows, it is not safe to count the judgment of any man infallible. You can prove his judgment before you accept it. Our duty is relaxed not a particle by the fact that some on the outside of this Chamber have passed upon it. We have seen instances of that every day here. So I am not at all content with the statement that it has been passed upon outside. The fact is that this is the only tribunal on earth that to-day has any authority or jurisdiction to pass upon it. While I have all the respect for these men to which they are entitled, and give them all respect for their qualifications, there are men in this Chamber as capable of discussing and deciding legal questions, and I care not to what they pertain, as there are outside of it.

Mr. BRANDEGEE. Mr. President——

The PRESIDING OFFICER. Will the Senator from Idaho yield to the Senator from Connecticut?

Mr. HEYBURN. Yes; I am through with my suggestion.

Mr. BRANDEGEE. Of course the Senator from Idaho is entirely correct when he suggests that because eminent lawyers do approve a certain bill it is not necessarily legal or constitutional. I remember the Northern Securities Company organization was approved by most distinguished lawyers, and a great many of them were finally set aside by the Supreme Court.

I should like to have the attention of the Senator from New York [Mr. ROOT] for a minute. I should like to ask the Senator from New York if he understands the words "with respect to" the transaction of their business to be equivalent to a tax imposed upon their right or privilege to transact business?

Mr. ROOT. I say I think the words "with respect to the carrying on or doing business by such corporations" do include the meaning of the words used by the Senator from Connecticut.

Mr. BRANDEGEE. I should like to ask the Senator also if they include anything else?

Mr. ROOT. I am not prepared to say on the moment whether something more may not be found in them. I am quite sure they do not and can not include anything more than the very relation between the tax and the carrying on or doing of the business which the Supreme Court has declared to be lawful as a method of taxation under the Constitution, because these words are the words which the Supreme Court itself uses in declaring a tax to be lawful. I am afraid that the suggestion of the Senator from Idaho to substitute the word "for" would lead us into difficulty.

Mr. HEYBURN. That was only a preliminary suggestion.

Mr. ROOT. I so understand.

Mr. HEYBURN. It was not all the change. It did not include all, but it was the first change to be made.

Mr. ROOT. I am satisfied that this language as it stands accomplishes the object desired and that it is open to no constitutional objection. I do not think that there is any reason why, in attempting to do a constitutional thing, the legislature should not use the very words by which the court describes a constitutional thing. I do not think it is necessary that we should use a different form of words; but I think in dealing with a subject of this kind we ought to be open minded and to realize that we may be mistaken, and that most valuable

suggestions may be made by other Senators. That is the attitude I occupy toward the suggestions that have been made this morning.

I do feel, however, that it is a very dangerous thing to change carefully drawn provisions on the spur of the moment on the floor of the Chamber. While I feel, so far as I am concerned, desirous of profiting by the suggestions of others, I think that those suggestions should be carefully scrutinized in order that, escaping from one, perhaps entirely fanciful, danger, we do not fall into other much more real dangers. Whatever suggestions come from so competent an authority as the Senator from Idaho ought to be carefully considered, and I hope they will be carefully considered by the committee.

Mr. BRANDEGEE. Mr. President, so far as I am concerned, I am in the same frame of mind that the Senator from New York [Mr. ROOT] is in. My mind is still open upon this question; and I think it is a question of such importance, where we are laying a tax upon every corporation in this country or upon something in connection with every corporation, that we at least should have some idea in our own minds of what we are laying a tax for and upon what we are laying it. I confess, up to the present time, that I have a very vague idea of whether we are attempting to impose a tax upon the right of corporations to do business or not. If we are imposing it upon their right to transact business, have we a right to prevent them from transacting business?

If these corporations upon which we are imposing a tax are organized by States and draw their privileges and their existence from the States, how can we say that we are imposing a tax upon their right to transact business, which they get wholly and entirely from the State, and not from us? I do not say that we have not the right to do that; the decisions seem to say that we have a right to impose a special excise tax upon corporations; but here is language used in this amendment with respect to the transaction of their business, and, being of an open mind and desiring to secure as definite an idea as I may upon what we really are doing, I ask the distinguished Senator from New York exactly what he thinks that language means and what it includes, and he admits that he thinks it includes the right to transact business, and it may include something else; he is not prepared to say that it does not; and I am free to say that I do not feel enlightened as to the meaning of that phrase. I think the use of a phrase in an important act of legislation ought to be made definite, so that at least the debates will show, when the court comes to construe the act, that we ourselves did not admit that we did not know what it meant and that we did not know what we intended by it. I noticed the peculiar guardedness of that language as soon as the amendment was reported, and I do think that we ought to thoroughly understand what it means.

The Senator from New York need not be afraid that there will be anything hastily adopted on the floor here, of course, because the parliamentary situation is such, by the interference of amendments to amendments, that no amendment can be offered upon the floor in Committee of the Whole; that the most that we are able to do——

Mr. LODGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from Massachusetts?

Mr. BRANDEGEE. Certainly.

Mr. LODGE. If the amendment proposed by the Senator from Rhode Island [Mr. ALDRICH] shall be adopted, then the amendment as amended will be open, and any amendment which it is desired to offer will be in order, only, of course, such amendments must be offered one at a time.

Mr. BRANDEGEE. Certainly. After the amendment to the amendment has been adopted and the atmosphere is cleared and there is but one proposition before the Committee of the Whole, of course it will be open to amendment, but at present nobody can offer any amendment. He can give notice that in the future he intends to offer an amendment, but nothing can be done now beyond the making of a suggestion.

The proponent of the amendment can modify his amendment, as I understand, up to the time that an amendment to it is offered, and then he loses the right to further modify it. So that, as it stands at present, this amendment has got to be voted upon as it is; and I for one think that the proper——

Mr. BACON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from Georgia?

Mr. BRANDEGEE. I do.

Mr. BACON. Mr. President, I am not prepared to agree with the Senator from Connecticut on the proposition which he has just stated. I think that one of two things must be manifestly true: Either that the amendment offered by the Senator from Rhode Island [Mr. ALDRICH] to the substitute proposed by the Senator from Massachusetts [Mr. LODGE] is now open to amendment——

Mr. LODGE. That is not in the nature of a substitute; but it is an addition.

Mr. BACON. What is not in the nature of a substitute?

Mr. LODGE. The amendment proposed by the Senator from Rhode Island is not in the nature of a substitute.

Mr. BACON. The Senator from Massachusetts misunderstood me, if he understood me to say that.

Mr. LODGE. I thought the Senator from Georgia said that.

Mr. BACON. No; I did not. I said the amendment of the Senator from Rhode Island to the substitute offered by the Senator from Massachusetts.

What I was proceeding to say was, either that the amendment is now open to amendment, or the amendment of the Senator from Rhode Island is not itself in order—one of the two things. I will state the reason for that.

If the substitute of the Senator from Massachusetts is a proposition recognized as pending in the relation of an original proposition, then, of course, the amendment of the Senator from Rhode Island is in order; and an amendment to that is in order. On the contrary, if the substitute of the Senator from Massachusetts is taken simply as an ordinary amendment to the amendment offered by the Senator from Texas [Mr. BAILEY], then it has already reached the second degree.

Mr. LODGE. Mr. President, if the Senator from Georgia will allow me there a moment. Of course I need not say to the Senator that, if it were not for Rule XVIII, the Senator from Rhode Island could not offer his amendment, for it would then be an amendment in the third degree.

Mr. BACON. Will the Senator kindly refer me to that rule?

Mr. LODGE. Under our rules and practice, where an amendment is offered in the nature of a substitute, it can be treated as a separate question.

Mr. BACON. Exactly.

Mr. LODGE. That is, one amendment is in order to the amendment of the Senator from Texas; one amendment is in order at a time to the substitute, and not more than one amendment, because otherwise you would create your third degree.

Mr. BACON. I turn to the rule which the Senator cites—Rule XVIII.

Mr. LODGE. Rule XVIII.

Mr. McLAURIN. Will the Senator allow me just a moment?

Mr. BRANDEGEE. Mr. President——

Mr. BACON. I shall not interrupt the argument of the Senator from Connecticut further. The only reason I did interrupt him was—if the Senator from Mississippi [Mr. McLAURIN] will pardon me—that the Senator from Connecticut was proceeding upon the theory that it was desirable to proceed with an amendment, but that he did not understand that he was at liberty to do so.

Mr. BRANDEGEE. That is exactly so.

Mr. BACON. And I thought it was important to have that question settled, if the Senator deemed it important that an amendment should be offered.

Mr. BRANDEGEE. I think it is important, and I yielded to the Senator, and still yield to him; but I do not want to yield to a great many other Senators.

Mr. BACON. I will suggest that the Senator proceed, and I shall, before he gets through, examine the rule to which the Senator from Massachusetts [Mr. LODGE] calls attention.

Mr. BRANDEGEE. So I say, Mr. President, it is of the utmost importance, before we proceed further with this subject, that we shall accurately define what we mean by the language of the amendment, "with respect to;" and I would suggest to the Senator from New York [Mr. ROOT] that the mere fact that the court in these various cases, where it has itself been very much embarrassed to distinguish between what is a direct tax and what is an excise tax—the mere fact that the court itself, in discussing those nice differences, has used language in defining what would be constitutional does not at all make this language in this amendment constitutional or definite. The court has not construed its own language; it has used some language construing a legislative act; and the fact that we take the language that the court has used in construing a legislative act does not make nor does it bring to bear upon this measure a decision of the Supreme Court as to its constitutionality or its validity. I think that distinction is perfectly apparent to anybody. The court say that Congress imposed a tax upon sugar-refining companies in reference to their business or with respect to their business. How else could the court have described the tax? But the court never said to Congress, "The next time you want to draw an excise tax and make it constitutional, if you will only use the same lan-

guage that we have used obiter in trying to designate what we are talking about, we will hold that mere phrase of ours to make a legislative act constitutional."

I do not say that this proposed act is not constitutional; on the contrary, I think it is; but I do say that it ill becomes the dignity of Congress to loosely use vague phrases of that kind, which are calculated to embarrass the court and in the use of them to have it appear upon the record that we admitted that we had no definite conception in our own minds what they meant.

Mr. ROOT. Mr. President, something which the Senator from Connecticut [Mr. BRANDEGEE] said about my answer to his question leads me to think that I may not have correctly apprehended the question, and I wish to reserve the right to examine the RECORD on the question, with reference to a possible modification of my answer, in case I did misapprehend it. Does the Senator from Connnecticut suggest any change of phraseology—any specific and definite change in words to be substituted?

Mr. BRANDEGEE. Mr. President, my suggestion was this: Without attempting to repeat verbatim my question—for it was asked offhand—I prefaced my suggestion with the question to the Senator, with the idea of getting from him, one of the authors of the amendment, what his idea was as to the meaning of those words "with respect to," so as to try to bring out definitely to the Senate, more especially for the purpose of clarifying my own idea upon the subject, exactly what it was that we were attempting to tax. I thought that if we were attempting to tax every corporation in the United States of America for the privilege of transacting business, we might as well use the words "for the privilege of transacting business." If we were imposing a tax in the nature of a license, or if we were imposing a tax with the idea that we granted them the right to do business, in consideration of the paying of a tax, I thought it was well to understand that. So I asked the Senator from New York if his understanding of that language was that we were imposing a tax upon corporations, upon their privilege to do business. The privilege to do business, I suppose, means their right to do business. If we are taxing these corporations upon their right to do business, as it seems to me, I admit these decisions seem to go upon the ground that a special excise tax may be imposed upon their right to do business, although that right is given by the States.

Mr. NELSON. Mr. President, will the Senator permit me to make a suggestion?

The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from Minnesota?

Mr. BRANDEGEE. Certainly.

Mr. NELSON. We are not taxing them and do not mean to tax them by this amendment for the privilege of doing business, but we are taxing them upon the business as a business; not for the privilege, not as a license to do that business, but we are taxing them upon that business—the business they do as corporations. That is the distinguishing feature.

Mr. BRANDEGEE. Mr. President——

Mr. NELSON. Now, if the Senator injects the very words he suggests, they would clearly make the proposed act of doubtful constitutional validity. If the purpose of the Senator is to make the law open to a construction by the Supreme Court that would invalidate it, then it would be very well to put in the words "for a license to do business;" but the object of the amendment is not to tax corporations for the license or privilege of doing business, but to tax them upon the business they do.

Mr. BRANDEGEE. I am very glad to have the Senator's construction of this language. I understand what he thinks about it. That shows that not only judges may differ about this thing, but that Senators on this floor differ about it.

I have not looked this case up particularly, but I have glanced hurriedly over the cases that have been referred to by Senators who have made remarks upon this whole question. At first it seemed abhorrent to me that the United States Government could arbitrarily impose a tax and collect it upon a corporation chartered by a State, with all its reserved rights, for the privilege of doing business.

The State had granted a franchise fifty years ago, perhaps, and its child had been conducting the business that it was authorized to do for half a century, when, suddenly, in comes the United States of America and says, "We demand of you 2 per cent upon your net income before you can have the privilege of doing business," or, as the Senator from Minnesota [Mr. NELSON] says, "We demand it upon your business." I fail to see the fine distinction the Senator from Minnesota seeks to draw between demanding it upon their business or demanding it upon their right to conduct their business. I say if it is the intention of this amendment to tax corporations either upon their privilege of doing business or their right to do business, we want to know it.

It was in following that inquiry, which lay in my mind somewhat indefinitely and vaguely, I admit, that I asked the Senator from New York if the corporation refused to conform to the contention of the United States that it could tax them upon the right or privilege of doing business, what would the Government do either in the way of conferring a further right or of cutting off any right they claim to have already?

Mr. CARTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Connecticut yield to the Senator from Montana?

Mr. BRANDEGEE. I yield to the Senator from Montana.

Mr. CARTER. Mr. President, the Senator's discussion is very interesting and very instructive. According to my view, the Federal Government does not assume by the passage of this amendment to extend any privilege to any corporation in a State or to deny any right or privilege now enjoyed by a corporation organized by a State. The amendment merely proposes a classification of subjects for taxation. The corporation is not to be assessed for the privilege of doing business. because that privilege can not be denied if the corporation is organized under the laws of a State, if its purposes are legitimate and not in contravention of public policy. The tax is assessed because certain business is being done in a certain form or method of organization, by incorporation or as joint-stock companies. It is not a license and not a tax on property, but a tax on that method of doing business, and because the business is being done under that legal form.

Mr. BRANDEGEE. Does the Senator from Montana claim that where a State charters a corporation the United States Government can definitely impose a tax upon that corporation because it has presumed to exist under the laws of its own State?

Mr. CARTER. Well, Mr. President, unquestionably in the levying of the tax on bank circulation Congress did interpose its hand and levy a tax which operated to extinguish the banks of issue in the States.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Idaho?

Mr. BRANDEGEE. I do.

Mr. BORAH. The Senator will bear in mind that the court expressly stated in that case that the tax was laid upon property, that the bank's circulation was notes, and it referred to the fact that they were the same as contracts with railroads, and so forth, and that it was a tax upon property. If we take that view of it here, then I ask, What becomes of the income-tax decision?

Mr. BRANDEGEE. Mr. President, if the Senator from Minnesota [Mr. NELSON] is correct in his construction, and if this amendment intends simply to impose arbitrarily an excise tax upon corporations, I submit it would be a great deal better and a great deal less embarrassing if the words—

> With respect to the carrying on or doing business by such corporation, joint-stock company or association, or insurance company—

Should be stricken out, so that then the provision would read:

> Shall be subject to pay annually a special excise tax equivalent to 2 per cent upon the entire net income.

That would clearly make it simply a special excise tax, and special excise taxes have been sustained by the Supreme Court. I ask the Senator from New York whether, in his opinion, that would not accomplish the very object that he has in view?

Mr. ROOT. Mr. President, I think it would weaken it, if I understand correctly what the Senator from Connecticut wishes; that is, to stop with the words "excise tax."

Mr. BRANDEGEE. No; the Senator did not understand me correctly. If the Senator has the proposed amendment on his desk, I ask him to look at line 11, on page 1.

Mr. ROOT. I have it.

Mr. BRANDEGEE. And I would ask him whether or not it would not be at least just as well to strike out at the end of line 10 the following words?—

> With respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company.

Mr. ROOT. I do not think it would. I think it would weaken the measure.

Mr. BORAH and Mr. RAYNER addressed the Chair.

The VICE-PRESIDENT. To whom does the Senator from Connecticut now yield?

Mr. BRANDEGEE. I was yielding to the Senator from New York [Mr. ROOT]. If he has finished, I yield to the Senator from Idaho [Mr. BORAH].

Mr. ROOT. May I say to the Senator from Connecticut that I personally should be very glad if the Senator from Maryland [Mr. RAYNER] might make a part of my answer to the question of the Senator from Connecticut whenever it suits the convenience of the Senator from Connecticut.

Mr. BRANDEGEE. I yield to the Senator from Maryland for that purpose.

Mr. RAYNER. After the Senator from Connecticut has concluded, I will ask the privilege of addressing the Senate for a very short time; but I want to say now, in answer to the question, that, in my judgment, such a change would absolutely destroy this amendment and make it an unconstitutional measure. When the Senator from Connecticut has concluded, I will ask the attention of the Senate for about twenty minutes upon the legal phases of this subject; but I think the elimination of those words would absolutely destroy this amendment, and I am prepared with the authorities to sustain that proposition.

Mr. BRANDEGEE. Now I yield to the Senator from Idaho.

Mr. BORAH. I want to call attention, Mr. President, for a moment to the case of Veazie Bank *v.* Fenno, as it has been referred to here a number of times as authority for taxing a franchise or the privilege of a corporation to do business. That was precisely what that case decided was not involved. Justice Nelson dissented from the majority opinion, holding that it was an attempt to tax the franchise of a State, and for that reason the law was void. The majority of the court said:

> But in the case before us the object of taxation is not the franchise of the bank, but property created, or contracts made and issued under the franchise, or power to issue bank bills. A railroad company, in the exercise of its corporate franchises, issues freight receipts, bills of lading, and passenger tickets; and it can not be doubted that the organization of railroads is quite as important to the State as the organization of banks. But it will hardly be questioned that these contracts of the company are objects of taxation within the powers of Congress and not exempted by any relation to the State which granted the charter of the railroad.

In other words, they are building a case here upon a case which held that it was a tax upon property; and the reason, no doubt, why this amendment is drawn in the nebulous condition it is, is because of the fact that it is not possible to avoid these cases without going to the proposition that you are taxing the right of a corporation to exist.

Mr. McCUMBER. Mr. President——

Mr. BRANDEGEE. Now I yield to the Senator from North Dakota.

Mr. McCUMBER. I merely want to suggest to the Senator from Connecticut that this matter was considered in the drafting of the amendment. On the copy which I had I took occasion to mark out the words objected to by the Senator from Idaho and insert the word "for." I presented it to the Senator from New York and those who were engaged in the drafting of the amendment. I substituted the word "for" in place of the other words simply because I thought that it was nearer to proper grammatical construction and for the purpose of coming more quickly to the point. The Senator from New York explained then, as he has explained now, that it was better to follow the exact words of the court which had passed upon the case referred to.

In addition to that was the further proposition that the word "for" might indicate that it was intended as a condition precedent to the carrying on of that business, and no one would attempt to sustain the proposition that we could tax the mere right of a corporation to do business, which is a specially granted right by the State. We could tax the carrying on of the business, but we would have no power to say, if a state corporation did not pay that tax, that it could not proceed to carry on business. That was my own view of the matter and the reason why I immediately thought it was better to use these words, which the Senator thinks are somewhat hazy, rather than the other word, which might possibly seem to indicate that it was a prohibition upon the doing of that business unless the tax was paid.

Mr. BORAH. Mr. President, the Senator from North Dakota will agree with me that the words are somewhat nebulous?

Mr. McCUMBER. A trifle.

Mr. BORAH. And undoubtedly for the reason that you are confronted with a legal proposition difficult to meet; and when you come to be more definite, it is going to be very difficult to get by the decision of the Supreme Court.

Mr. McCUMBER. I admit, Mr. President, it is very difficult to get a case that will avoid all the objections and all the innuendoes of the courts in the decisions in all of these cases; but, upon the broad proposition that we have the authority to tax the business of a state corporation, I think we all agree.

Mr. BORAH. Then, as I understand, it is a tax for the privilege of carrying on a business, and might just as well have been laid——

Mr. McCUMBER. No; I would not allow the Senator to use the words "privilege of carrying on business;" it is a tax upon the carrying on of the business.

Mr. BORAH. Then, I will say that it is a tax upon the carrying on of business. Well, that might just as well have been applied to a tax on the carrying on of the business of a partnership or an individual.

Mr. McCUMBER. Certainly. I am not saying that it could not be extended further; but it was thought best to confine it to corporations.

Mr. CUMMINS and Mr. SUTHERLAND addressed the Chair.

The VICE-PRESIDENT. To whom does the Senator from Connecticut yield?

Mr. BRANDEGEE. I yield to the Senator from Iowa first.

Mr. CUMMINS. I rose to ask the very question that was last suggested by the Senator from Idaho [Mr. BORAH]. I think there is no difference of opinion among the lawyers of the Senate or among the laymen of the Senate over the proposition that it is within the power of Congress to tax the business or the carrying on of business by a corporation. I will address my question now to the Senator from Connecticut, and ask him whether he sees any constitutional difference between taxing the business of a corporation and taxing the business of an individual? I can understand that Congress might desire to select for taxation the business of a corporation or of certain corporations rather than the business of an individual or certain individuals. But I will ask him whether he perceives any constitutional difference between the exercise of the power against a corporation and the exercise of the power against an individual?

Mr. HEYBURN. Mr. President, I will ask the Senator to permit me to ask the Senator from Iowa a question at this point. Does he not mean to tax the proceeds of the business, rather than, as he expressed it, to tax the business?

Mr. CUMMINS. Mr. President, it matters not to me.

Mr. HEYBURN. One would be the right to do business——

Mr. CUMMINS. I am not entering into that nicety, or the form of expression. What I say is this: We will assume that we have a corporation doing a dry-goods business. Congress has the right to say that it shall pay 2 per cent upon its net income.

Mr. HEYBURN. That is taxing the proceeds of its business.

Mr. CUMMINS. It is taxing the business; but it arrives at the amount of the tax by reference to its net income. Upon the other side of the street we have a business of the same kind carried on by an individual. I have not any doubt about the right of Congress to tax the individual, or the business of the individual, or the income of that business, in just the same way that it taxes the income of the corporation as a means of reaching a tax upon its business. I want to put that question to the Senator from Connecticut, because I intend later to give a little attention to it.

Mr. HEYBURN. I should like to ask a question of the Senator from Iowa, with the permission of the Senator from Connecticut.

Mr. CUMMINS. Now I shall be glad to hear it.

Mr. HEYBURN. My question is in regard to a distinction between taxing the right to do business and taxing the proceeds of business. The Senator, it seems to me, has spoken of them as being the same. There may be no proceeds resulting from doing business, and yet there may be a tax upon a man for opening up for the purpose of doing business, just as we very often charge a license fee for doing business when there is no business whatever done.

So I merely wanted to distinguish those things. I did not want to be understood as confusing a tax upon the right to do business with a tax upon the result of doing business.

Mr. CUMMINS. I do not now desire to enter into that question. My only question was whether a business carried on by an individual could not be as constitutionally taxed as a business carried on by a corporation.

Mr. BRANDEGEE. I called the attention of the Senator from Idaho at the beginning of my remarks upon this question to the fact that in the revenue act of 1898 the tax was imposed upon the gross earnings of the business. It did not say "with respect to the business." It was imposed upon the earnings of the business in the Spreckels case.

Mr. CUMMINS. And may I add there that it was imposed upon the business of an individual as well as upon the business of a corporation carrying on such a concern?

Mr. BRANDEGEE. The Senator has anticipated what I was about to say. The language of the act there included persons, associations, companies, and corporations, if I remember correctly.

Mr. HEYBURN. Will the Senator permit me to read the language?

Mr. BRANDEGEE. I yield to the Senator from Idaho.

Mr. HEYBURN. In order that the statement may be accurate, I read section 27 of the act under which the Spreckels case arose:

That every person, firm, corporation, or company carrying on or doing the business of refining petroleum or refining sugar or owning or controlling any pipe line for transporting oil or other products whose gross annual receipts exceed $250,000 shall be subject to pay annually a special excise tax equivalent to one-quarter of 1 per cent on the gross amount of all receipts of such persons, firms, corporations, and companies in their respective business in excess of said sum of $250,000.

I think that will clear the atmosphere somewhat in regard to what was taxed.

Mr. SUTHERLAND. Mr. President——

Mr. BRANDEGEE. I yield to the Senator from Utah.

Mr. SUTHERLAND. I should like to make a suggestion to the Senator from Iowa with reference to the question he has propounded. I think he is quite right in his suggestion that there is no distinction between the business of an individual or a copartnership and that of a corporation so far as that precise question is concerned. But does the Senator from Iowa think that the act of receiving interest, for example, upon a bond, or the act of receiving rent from a landed estate can be in any way properly described as a business?

Mr. CUMMINS. I am not prepared to say that it can be. My question, however, simply related to those individuals and those copartnerships that are engaged in business, whatever term or definition may be given to that word. And my inquiry, of course, would lead to the suggestion that if we are imposing a tax on business, we may just as well impose it, and can just as constitutionally impose it, upon individuals and copartnerships doing business as we can upon corporations doing business.

Mr. SUTHERLAND. I think there is a great deal of justice in that suggestion, if such a law can be framed. But I am personally unable to see just how we can make the classification.

Mr. CUMMINS. May I interrupt for just a moment further? It can be framed by adding to the amendment the phrase "persons or copartnerships doing business." There would be no difficulty about adding that phrase, if it were not desired, as it appears to be, to levy a discriminatory tax.

Mr. SUTHERLAND. Now, Mr. President, if the Senator from Connecticut will permit me——

Mr. BRANDEGEE. I yield to the Senator from Utah.

Mr. SUTHERLAND. I simply desire to make a suggestion to the Senator. The Senator thinks, if I understand him correctly, that the phrase "with respect to the carrying on or doing business" should be stricken out and the word "for" inserted, so that the act would read: "A special excise tax for doing business by such corporation."

Mr. BRANDEGEE. That, as I understood, was the suggestion of the Senator from Idaho.

Mr. HEYBURN. It was merely a tentative suggestion.

Mr. SUTHERLAND. So I understood. If the Senator will permit me, I should like to call his attention to what seems to be a difficulty in respect to that change. If we insert the word "for" in place of the phrase suggested to be stricken out, the law will in terms impose a tax "for" the doing of business—in other words, for the privilege of doing business. If this act intends to impose a tax on account of the privilege of doing business, it is not for that privilege, but it is simply upon it. In other words, Congress is not imposing a tax in order to enable a corporation to do business, or in order that it may do business; but, recognizing the fact that it is already engaged in the doing of business, if the act is to be construed in that way at all, it is imposing a tax upon the privilege already existing of doing the business; and if we insert the word "for," it seems to me it will be subject to that objection.

Mr. BRANDEGEE. Mr. President, I was about to ask the Senator from North Dakota, who had made the suggestion of the use of the word "upon"——

Mr. McCUMBER. I suggested the use of the word "for."

Mr. BRANDEGEE. I understood that the Senator from North Dakota had either suggested himself, or said that somebody else had suggested, that the excise tax should be upon the transaction of business, instead of in respect to the transaction of business.

Mr. McCUMBER. I used the word "for;" I suggested that word, and certain objections were urged against it.

Mr. BRANDEGEE. I should like to ask the Senator from North Dakota whether, in his opinion, it will not tend to clarify the meaning of the act if the word "upon" is substituted for the words "in respect to?"

Mr. McCUMBER. Mr. President, at a glance I am free to say that I think it would.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Utah?

Mr. BRANDEGEE. I yield.

Mr. SUTHERLAND. I think that while it would be using, perhaps, not an ungrammatical phrase, yet certainly a very awkward phrase, that is what the law means. In other words, if we insert the word "upon," it will then read:

A special excise tax upon the doing business by such corporations.

It strikes me that that is a rather awkward phrase. I think the language used here, "Special excise tax with respect to the carrying on or doing business," is preferable, because, among other reasons, it is the precise language used by the Supreme Court. I may say that, in passing upon the act imposing the sugar tax, the Supreme Court translated the act into its own language. Instead of using the precise words of the act, it put its own construction upon the act and translated it into the words used by the court. And those words were:

Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business of refining sugar.

I can see no possible harm that will result if we adopt the precise language the Supreme Court used in characterizing this act. Those were not the words used in the act itself; but the court said that that was what the act meant. Why, then, should we not use the language the court used in translating the language of the law instead of the language of the law itself?

Mr. BRANDEGEE. Mr. President, the Supreme Court itself there said, as the Senator has just read, that the tax was upon gross receipts.

Mr. SUTHERLAND. Oh, no. The court said it was not upon gross receipts. The court said:

Clearly the tax is not imposed upon gross annual receipts as property, but only in respect to the carrying on or doing the business of refining sugar.

Mr. McCUMBER. They both mean the same thing.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from Idaho?

Mr. BRANDEGEE. I yield.

Mr. BORAH. I should like to ask the Senator from Utah a question. Suppose we should adopt the exact language that was used by the Supreme Court in the Spreckels case, and suppose it should transpire that some business which a corporation was carrying on was made up entirely of owning, using, and deriving profits from real estate, what would become of the tax in that case, in view of the language of Justice Harlan, where he said that the only reason they permitted the rent derived from real estate to be taxed in the Spreckels case was because it was incidental to refining sugar, thus clearly leading to the belief that if it was a business of itself it could not be taxed?

Mr. SUTHERLAND. My attention was diverted from the first part of the Senator's question. But if I understand it, I can see no difficulty. A corporation that is a holding corporation is engaged in business. It is a corporation; and the act itself measures the tax not only by the amount of business transacted, but also by the capital invested.

Mr. BORAH. Mr. President, it will be remembered that in the Spreckels case the corporation owned certain wharves and collected rent from those wharves. It was contended that that was real estate and the collection of rent from real estate, and that therefore it came within the income-tax decision. Justice Harlan, in writing the opinion, in effect said:

This matter is not free from difficulty; but we take the view of it that the holding of the real estate, the wharves, and the collecting of the rent is incident to the other business of refining sugar; and therefore we will decline to declare it to be a business of itself.

Mr. SUTHERLAND. If I remember the Spreckels case correctly—it is some time since I read it through—the point of the decision was not that the receipts from the wharves might be considered as the receipts from real estate, but that such receipts were not within the contemplation of the law. The law was imposed, in effect, upon the business of refining sugar.

Mr. BORAH. Exactly.

Mr. SUTHERLAND. And the receipts from the wharves, or the receipts from the deposits the company had made, and upon which it received interest, were no part of its refining business, in the sense of the law.

Mr. BORAH. Mr. President, if the Senator will review that case again, he will find that he is mistaken. He will find that Mr. Justice Harlan said that the only reason the court would pass it by was because they considered it a part and parcel of the doing of the business of refining sugar, and incident to the carrying on of that particular business; and therefore the de-

duction was clear that it would not fall within the income-tax decision.

Mr. ELKINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Connecticut yield to the Senator from West Virginia?

Mr. BRANDEGEE. Yes.

Mr. ELKINS. I notice that in the pending amendment the framers of the same have used the exact language of Justice Harlan in rendering the opinion of the Supreme Court in the Spreckels case. I mean the words "with respect to the carrying on or doing the business." I want to ask the Senator, inasmuch as he has given a great deal of consideration to this matter, and is an able lawyer, how the words I have quoted should be interpreted, whether as an excise tax or a tax on property?

Mr. BRANDEGEE. My opinion is clearly that it is an excise tax, and it so specifies on its face.

Mr. ELKINS. But it says "with respect to carrying on the business." Then, if it is an excise tax, is it constitutional?

Mr. BRANDEGEE. Mr. President, the amendment itself, on the first page, states that this tax is levied as a special excise tax, and it then proceeds to state that it is a special excise tax with respect to the carrying on or doing business by such corporations.

Mr. ELKINS. Let me ask the Senator a further question. The State creates a corporation to carry on business, and it is carrying it on legally and in conformity with all the laws of the State creating it. Has the Federal Government, under its delegated powers, the right to levy an excise tax on that corporation for the privilege of doing business to the extent of destroying it? If it can tax it at all, it can tax it enough to destroy it. Does such power reside in the General Government, or, I should say, in Congress?

Mr. BRANDEGEE. It has been decided over and over again that the Congress has the right to levy special excise taxes and excise taxes.

Mr. ELKINS. Yes; in certain directions and on certain things. But has it the right to levy such a tax on a corporation legally incorporated and doing business under the laws of a State, to the extent of destroying the corporation?

Mr. BRANDEGEE. The Spreckels case distinctly decided that.

Mr. ELKINS. This is the language of the Spreckels case, but it is open to two constructions. What will the court do when it gets this amendment? It must decide one way or the other. I know that the distinguished Senator from New York and those aiding him in framing this amendment have taken shelter under the words of the Supreme Court which I have read. He says, "How can you attack the amendment when it follows the language of the Supreme Court?" But the Supreme Court has never had a case before it of precisely the kind that will be raised by this amendment and which we have been discussing. If it is an excise tax, I think it is clearly unconstitutional. If it is a tax on property or upon the carrying on of business, then it may be something else.

Suppose you should strike out "excise tax" here, what effect would it have? I will ask the Senator what effect it would have on the language? You can not legislate a fact. You can not name a thing as an excise tax and make it such simply by declaring it is an excise tax when it is not.

Mr. BRANDEGEE. Mr. President, I made the point early in my remarks that I doubted whether the distinguished Senator from New York had secured refuge under the language of the Supreme Court. The Senator from Utah takes the view of the Senator from New York that he has. I very much doubt it, inasmuch as I consider that language of the Supreme Court, and the use of the words "in respect to," as simply the ordinary language of the Supreme Court in expressing what it was construing. It did not purport nor intend to construe its own words.

Mr. SUTHERLAND rose.

Mr. BRANDEGEE. I now yield to the Senator from Utah.

Mr. SUTHERLAND. In view of the question the junior Senator from Idaho put to me respecting the Spreckels case. I have looked at the case and find that I am entirely correct in my statement, except that both the Senator and myself were in error in assuming that the Supreme Court had held that the receipts from the wharves would not be subject to the tax.

Mr. BORAH. That is what I was talking about.

Mr. SUTHERLAND. The Supreme Court held that the receipts from the wharves did come within the contemplation of the act. But the court said, with reference to the receipts from the deposits:

> We are of opinion that upon the point last stated there was error. The gross annual receipts upon which, in excess of a certain amount, the tax was imposed, were, under the statute, only receipts in the business of refining sugar, not receipts from independent sources. But clearly neither interest paid to the plaintiff on its deposits in bank nor dividends received by it from investments in the stocks of other companies were receipts in the business of refining sugar.

So I was entirely accurate when I said that the court did not deal with the question as to whether or not the tax was derived from real estate.

Mr. BORAH. Mr. President, the Senator was entirely in error; I did not address my question to him concerning any interest upon deposits. I addressed myself to him concerning the rent for the wharves. I have here the language of the court. And I will submit to any Senator whether or not this amendment, if it is to apply to all corporations, whether doing business as real estate corporations or otherwise, is free from that doubt which enables us to say, as it has been said we should say, that we are not going to enact a lawsuit?

This question was raised with reference to wharves, and the court said:

> The question is not wholly free from difficulty—

And remember, it said this after it had decided that this was an excise tax upon the privilege of doing business, or upon the doing of business—

> But we think the better reason is with the ruling in the circuit court and in the circuit court of appeals to the effect that wharves, in every substantial sense, constituted a part of the plaintiff's "plant," and, if not absolutely necessary, were of great value in the prosecution of its business; and that receipts derived by plaintiff from the use of the wharves by vessels—particularly because, with rare exceptions, the vessels using them brought to the plaintiff the raw sugar which it refined—were receipts in its business of refining sugar. The primary use of the wharves was in connection with and in the prosecution of that business. The importation of raw sugar from abroad was not, in any proper sense, a separate business, but an essential part of the plaintiff's general business of refining sugar.

Suppose it had not been. Suppose it had been the owning of wharves and renting of them to other parties. What would become of that under the reasoning and the logic of Justice Harlan?

Mr. SUTHERLAND. It would have been outside of the tax, because not within the language of the law imposing the tax.

Mr. BORAH. Exactly.

Mr. SUTHERLAND. But the character of the property as real estate was not in any manner involved. That is all I have said.

Mr. BORAH. But at this time Mr. Justice Harlan was discussing alone the question of whether, under this law, the rents from real estate could be taxed, in view of the income-tax decision. The matter gets clearer all the time.

Mr. BRANDEGEE. Mr. President, the act of 1898 did impose a tax upon gross receipts. The court said:

> Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business of refining sugar.

The language of the act distinctly imposed the tax upon gross receipts above $250,000; and the court, in construing it, said that although it was imposed upon gross receipts, it was not imposed upon gross receipts as property, because Congress was not taxing the property, but was taxing the corporation with respect to the transaction of its business.

But nowhere did the court define in what respect or in what way as to the transaction of its business Congress was taxing it. And it seems to me that after this discussion nobody on this floor is any more able to define what is meant by the words "with respect to the carrying on or doing business" than any delegate to the Constitutional Convention was able to explain what was meant by a direct tax. And we know what confusion has arisen in the decisions of the Supreme Court over the question of what is and what is not a direct tax. Merely because the court, in passing, stated that the tax under the act of 1898 was levied upon the gross receipts in respect to the transaction of business by the corporation, it can not be said that the use of those terms will make this act constitutional, unless it is constitutional on other grounds.

I have now said all I care to say in calling attention——

Mr. McCUMBER. May I ask the Senator a question right here?

Mr. BRANDEGEE. Certainly.

Mr. McCUMBER. Does not the Senator believe that the words "a special excise tax with respect to the carrying on or doing business" mean the same thing as "a special excise tax upon the carrying on of a business?"

Mr. BRANDEGEE. I think that is what is somewhere lurking vaguely in the mind of everybody here. And if it be true that it means the same thing, why not use the term that is beyond any question or cavil instead of resorting to a mystifying phrase?

Mr. HEYBURN rose.

Mr. BRANDEGEE. I yield to the Senator from Idaho.

Mr. HEYBURN. The distinction would seem to me to be that the words are not sufficient as a grant of power to the executive branch of the Government to do the thing—that is, to collect the tax. They are not a sufficient grant of power; and if the grant of power lies anywhere, it must lie in those words.

Mr. BRANDEGEE. Without disputing the constitutionality of the act—for I think we all admit, or, at least I do, that the Government has a right to select corporations for taxation, and exclude partnerships—it is certainly an injustice to a small corporation to allow a partnership, engaged in the same business and in close competition with it, to go untaxed, while the small competing corporation is compelled to pay a tax of 2 per cent. And I should like to ask the chairman of the committee if he is able to state why it was that the committee did not impose this tax upon partnerships as well as upon corporations?

Mr. ALDRICH. Mr. President, there were a vast number of industries and subjects which the committee might have included, I suppose; but they had to stop somewhere. The committee, with the advice they had, believed the present tax to be constitutional; the President's message advised us as to the character of the legislation which he desired; and the limitation seemed to the committee to be proper and natural. We did not intend to tax everybody and everything in the United States.

Mr. BRANDEGEE. But on principle, Mr. President, there would seem to be no difference between a partnership and a corporation. They are both combinations of men to do business. I wondered whether or not the question had been presented to the committee, and whether or not there was any discussion in the committee as to it.

Mr. ALDRICH. Does the Senator think we could constitutionally tax the incomes of individuals received from real estate, for instance?

Mr. BRANDEGEE. The question whether a copartnership is an individual or not is one that I should want a little time to consider.

Mr. CURTIS. Mr. President, the Senator recognizes, however, that there is a great deal of difference in the extent of the liability of members of partnerships and members of corporations.

Mr. BRANDEGEE. Entirely so; and I will ask the chairman of the committee whether or not that matter was considered by the committee?

Mr. ALDRICH. Mr. President, I suppose the Senator from Connecticut is as well aware as I am that any Senator, even with much less ingenuity than the Senator from Connecticut, could suggest in a five-minute speech questions which could not be answered in the course of a session. There were a great many difficulties surrounding this problem, and the committee decided to hew closely to the line and follow the suggestions and recommendations of the President in this legislation.

Mr. BRANDEGEE. Does the Senator desire to answer my inquiry as to whether the matter of imposing a tax upon partnerships was considered at all by the committee?

Mr. ALDRICH. I will say that it was considered, and the committee thought it raised a cloud of questions which they did not care to discuss or to dispose of.

Mr. RAYNER obtained the floor.

Mr. TALIAFERRO. Mr. President, I suggest the absence of a quorum.

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Florida?

Mr. RAYNER. I yield to the Senator.

The VICE-PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Aldrich	Chamberlain	Frye	Newlands
Bacon	Clapp	Gallinger	Overman
Bailey	Clark, Wyo.	Gamble	Page
Borah	Crawford	Guggenheim	Penrose
Bourne	Culberson	Heyburn	Perkins
Bradley	Cullom	Hughes	Piles
Brandegee	Cummins	Johnston, Ala.	Rayner
Briggs	Curtis	Jones	Root
Bristow	Davis	Kean	Scott
Brown	Depew	La Follette	Stone
Bulkeley	Dick	McCumber	Sutherland
Burkett	Dillingham	McEnery	Taliaferro
Burnham	Dolliver	McLaurin	Taylor
Burrows	Elkins	Martin	Warner
Burton	Fletcher	Money	Wetmore
Carter	Foster	Nelson	

Mr. BACON. I desire to state that my colleague [Mr. CLAY] is necessarily absent from the city, and will be absent for several days.

Mr. OVERMAN. I wish to announce that my colleague [Mr. SIMMONS] is unavoidably detained to-day and will not be in the Chamber.

The VICE-PRESIDENT. Sixty-three Senators have answered to the roll call. A quorum of the Senate is present.

Mr. RAYNER. Mr. President, I will kindly ask the attention of the Senate to discuss the legal phases of this amendment.

I want to say that I am in favor of the income tax and I shall vote for the income tax if I have the opportunity of doing so. I may not have the opportunity of doing so, however. I may be forced ultimately to decide whether I shall vote for this corporation tax or not. If I am forced to that ultimate decision, I shall vote for it.

I want to be distinctly understood upon this proposition. Between an income tax and a corporation tax I am decidedly in favor of an income tax, for reasons that have already been given by Senators, and I do not desire to add anything to the literature on that subject. But if ultimately I am either compelled to vote for the amendment of the committee or to vote for no additional tax at all, I shall vote for the corporation tax; and I rise now for the purpose of explaining my vote and justifying it.

I believe that this is a constitutional measure, and I hope that I shall be able to demonstrate that proposition. I do not care for words, Mr. President. I think if you will eliminate the sentence that the Senator from Connecticut desires to have eliminated you will make the law invalid, not that I believe for a moment that a law can be made constitutional by legislation, but a law can certainly be made invalid by leaving something out of the law.

I will state my propositions, and I will indulge in no irrelevant or collateral matter. I will come right to the point of the discussion. I lay down these three propositions: First, that this tax is an excise tax. That is the first proposition. The second proposition is that it is a uniform tax. The third proposition is that it does not infringe upon the reserved rights of the States.

The first proposition is that this is an excise tax. There can not be any doubt upon that proposition. No matter how this bill is worded the word "or" or the word "and" can not change the construction of what this proposed law is. It is an excise tax. It is an excise tax and not laid upon the profits of a corporation. This is not a tax laid upon the net profits of a corporation. If it was a tax laid upon the net profits of a corporation, it might possibly come within the income-tax decision. It is a tax laid upon the business and privileges of a corporation, and the measure of the tax is the net profits of the corporation. That is about as concisely stated as I can state it, and it has been so stated, not once, but a hundred times, in the different decisions upon kindred propositions. When we get away from that proposition we indulge in what seems irrelevant and collateral matter that does not even illuminate the proposition we are discussing.

Let us look at this and see whether I am right or not. I do not like the corporation amendment; I think it is inequitable; but when the time comes and we can not obtain an income tax, then I am in favor of this tax. I am in favor of an income tax upon the proposition advanced by the Senator from Texas and the Senator from Idaho and the Senator from Iowa, and other Senators. When the point is reached, I will vote for this corporation tax rather than vote for no tax, and that is the only ground on which I will vote for it. In voting for it I want to justify my vote on the ground that I believe it is a legal tax, and there will not be a dissenting opinion in the Supreme Court of the United States when the Supreme Court confronts it for the simple reason that the Supreme Court, in a number of cases, has already covered the proposition.

The senior Senator from Minnesota [Mr. NELSON], whose mind always goes to the root of a legal question, settled it just now in answer to the Senator from Connecticut. He said this is not a tax for the right to do business; it is a tax upon the business. It is a tax upon the business privileges of a corporation, and you measure that tax simply as a standard of measurement by the net profits that the corporation obtains. You can take any other standard. You can take any standard you want if it is not an arbitrary standard.

Mr. OVERMAN. Let me call the attention of the Senator to the fact that franchise taxes——

Mr. RAYNER. This is a tax upon the privilege and the business of a corporation and the facilities of a corporation.

Mr. OVERMAN. Franchises are of two classes—primary and secondary. The primary franchise is the right of a corporation to exist, and the secondary franchise is the right, the privilege, to do business. The Senator says this is a tax on the privilege to do business, and therefore it is a tax on the secondary franchise.

Mr. NELSON. Mr. President——

Mr. RAYNER. Let me answer that a moment.

Mr. NELSON. Will the Senator allow me?

Mr. RAYNER. Allow me to answer that, and then I will listen. The Senator from North Carolina had it right except that he has reversed the order. A tax on business is a primary tax, and a tax on the franchise is a secondary tax. Being a primary tax upon the business of a corporation, under the decisions it is perfectly lawful, even if it resulted in destroying the franchise. I will give the Senator the authorities in a moment. The distinction the Senator makes is one recognized in all the decisions. Now I yield to the Senator from Minnesota.

Mr. NELSON. Mr. President, all I intended to suggest to the Senator from Maryland, in order that he may make his statement accurate, is that this is a tax not upon the privilege as a privilege, but simply upon the business of the corporation, nothing more, nothing less. As the Senator from Maryland well says, the measure of the tax is the net income of the corporation over and above the exemption.

Mr. RAYNER. That is pretty close to it, but I can not exactly agree to it. I will give the definition a little more accurately. I have here quite a number of decisions. It is a tax on the privilege and facility of a corporation. It is just as the Senator from New York said yesterday. It could not have been stated better.

Said the Senator from New York:

It is not the profits that would be subject to the tax, but the privilege or facility of transacting the business through corporate form. It matters not from what source may come the income which is seized upon by the law as a measure for the value of the facility or privilege which is taxed.

That is the language of the Supreme Court. Now let us look at it. Here is "a special excise tax with respect to the carrying on or doing business by such corporation," and so forth. You are not laying a tax upon the net income; you are laying the tax upon the carrying on or doing business by such corporation, and that tax is to be equivalent to 2 per cent upon the entire net income over and above $5,000. The net income over and above $5,000 is the standard of the measurement. You are not taxing the net profits. If we get away from that, the whole law falls to the ground. We are not taxing the net profits. We are taxing just what this measure says we are taxing, and that is we are taxing the business of such corporation.

Then, in order to ascertain what the tax will be, we provide that it shall be "equivalent to 2 per cent upon the entire net income." What does the Supreme Court say?

Mr. SCOTT. Will the Senator allow me to ask him a question?

Mr. RAYNER. Certainly.

Mr. SCOTT. Where a State levies a tax on corporations for the privilege of doing business, if the Government should lay an additional tax, would not that be double taxation?

Mr. RAYNER. No, sir; it would not.

Mr. SCOTT. For allowing them the privilege to do business.

Mr. RAYNER. It would not. This is an excise tax. The mere fact that a State may levy a franchise tax, in my judgment, in no sense of the word prohibits the Government from levying an excise tax. It would be unjust; it would be unfair; it would be oppressive; but, in my humble judgment, it would not be unlawful; and the Supreme Court has on two or three occasions decided the matter.

Mr. CUMMINS. Mr. President——

The VICE-PRESIDENT. Will the Senator from Maryland yield to the Senator from Iowa?

Mr. RAYNER. Certainly.

Mr. CUMMINS. I desire to ask the Senator from Maryland a question. I hope he will not think that I disagree in any measure with the principles that he has just announced, but assuming that this is a tax upon the facility or facilities of a corporation for doing business, or, broadly speaking, upon the business of the corporation done in that manner, I should like to ask the Senator whether he believes that we can not also constitutionally levy a tax upon the facility of doing business as an individual?

Mr. RAYNER. I think we can.

Mr. CUMMINS. For instance, more than half the banks in our States are private banks. They think they have superior facilities for doing business. They think they have a great advantage over corporations. These banks would not in any wise be taxed by the present measure; but I should like to know whether the Senator sees any constitutional objection in the way of extending this tax to such institutions?

Mr. RAYNER. I do not; not the slightest. I think you can tax the privileges of an individual the same, and they are doing it. The Government is taxing special occupations. Take the tobacco and distillery cases. I agree with the Senator from Iowa. I want the Senator to understand that I am with him upon the income-tax proposition entirely. All I am doing now, if we can not frame a bill like that, is to justify my vote.

Let me read now a few lines from the Spreckels case:

The contention of the Government is—

This is the Spreckels case—

that the tax is not a direct tax, but only an excise imposed by Congress under its power to lay and collect excises, which shall be uniform throughout the United States.

Now:

Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business of refining sugar. It can not be otherwise regarded because of the fact that the amount of the tax is measured by the amount of the gross annual receipts.

Now, just listen to this for a moment, because this is important in view of the discussion that has taken place:

The tax is defined in the act as "a special excise tax"—

Hear what the court says about that. It is defined the same way here—

and therefore it must be assumed, for what it is worth,—

I do not think it is worth much, but this is what the court says. I do not think it is worth much to say you can not make an act constitutional by legislation simply; but notwithstanding the court says this—

and therefore it must be assumed, for what it is worth, that Congress had no purpose to exceed its powers under the Constitution, but only to exercise the authority granted to it of laying and collecting excises.

This general question has been considered in so many cases heretofore decided that we do not deem it necessary to consider it anew upon principle.

And then they give the cases that I shall not even refer to. Here is the way they conclude their judgment:

In view of these and other decided cases we can not hold that the tax imposed on the plaintiff, expressly with reference to its "carrying on or doing the business of * * * refining sugar," and which was to be measured by its gross annual receipts in excess of a named sum, is other than is described in the act of Congress, "a special excise tax," and not a direct one to be apportioned among the States according to their respective numbers. This conclusion is inevitable from the judgments in prior cases, in which the court has dealt with the distinctions.

We may make some allowances for the difficulty here in the Senate of getting a proper expression of our views, because here is what the court says about the matter:

This conclusion is inevitable from the judgments in prior cases, in which the court has dealt with the distinctions, often very difficult to be expressed in words, between taxes that are direct and those which are to be regarded simply as excises. The grounds upon which those judgments were rested need not be restated or reexamined. It would subserve no useful purpose to do so. It must suffice now to say that they clearly negative the idea that the tax here involved is a direct one, to be apportioned among the States according to numbers.

This answers the point that, I think, has been made by some of the Senators on the other side, especially by the senior Senator from Idaho:

It is said that if regard be had to the decision in the Income Tax cases, a different conclusion from that just stated must be reached. On the contrary, the precise question here was not intended to be decided in those cases. For, in the opinion on the rehearing of the Income Tax cases the Chief Justice said: "We have considered the act only in respect of the tax on income derived from real estate and from invested personal property, and have not commented on so much of it as bears on gains or profits."

Now, this answers the question of the Senator from Iowa—

As bears on gains or profits from business, privileges, or employments—

If the Senator from Iowa will notice, they do not say their corporate business, privileges, or employments; they say business, privileges, or employments—

Has assumed the guise of an excise tax, and been sustained as such.

Mr. President, this settles the case that it is an excise tax. Now, the point is made that if we are imposing excise taxes we ought to define the corporations; we ought not to say all corporations. There is nothing in that point. Suppose we defined every corporation doing business in the United States, suppose we taxed all corporations doing business in the United States, and defined them by this bill, just as in the Sugar case here it defined two or three of them, would that be a valid bill? The answer is that it would be a valid bill, because we defined them. Instead of defining them, we say "all corporations." What is the difference? What is the difference between saying all corporations and defining all corporations? Therefore, Mr. President, I think the proposition has passed into judicial history that this is an excise tax.

It has been said that you can tax the income of the real estate of corporations, that you can tax the income of corporations that are dealing in real estate. You do not tax the income of those corporations. You tax the business of those corporations, and you measure the tax by the net profits of the corporations.

Of course real-estate corporations come under this bill. I do not suppose any Senator will deny that a corporation dealing in real estate, the class of corporations mentioned by one Senator yesterday, comes within this bill; but it does not come within this bill as a corporation taxed upon its profits. It comes within the bill just as any other corporation, a corporation in which a tax is levied upon the business and the privileges of that corporation, measured by the net profits of the corporation, and it comprises all sorts of corporations.

I come now to the second proposition.

Mr. CUMMINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland further yield to the Senator from Iowa?

Mr. RAYNER. Certainly.

Mr. CUMMINS. May I ask one further question? Would the Senator attempt a definition of the word "business?" What does it include? I think it would be a very interesting and instructive phase of this discussion as we go along to have some clear idea of what the word "business" covers.

Mr. RAYNER. Mr. President, in one of the cases that I have not before me the Supreme Court has said it is extremely difficult to define what is meant by "business." It would be almost impossible for me to define what it means. Every business that a man enters upon is business. Now, could every kind and class of business be taxed? I think it could. But it has never been passed upon by the Supreme Court. The Senator recollects the two cases that went up in reference to the tax on distilleries, and he recollects the language of the court, which left the question in doubt. I think that is a question hardly anyone can answer, because the point the Senator wants is this: Can we tax every kind of business? That is really the proposition.

Mr. CUMMINS. It is rather——

Mr. NELSON. Will the Senator from Maryland yield to me a minute?

Mr. RAYNER. If the Senator from Iowa will yield, certainly.

Mr. CUMMINS. I am glad to yield to the Senator from Minnesota.

Mr. NELSON. The business of a corporation is determined by the articles under which the corporation is incorporated.

Mr. RAYNER. Yes, Mr. President; but the Senator from Iowa was asking about the business of an individual. He is not asking about the business of a corporation.

Mr. CUMMINS. I asked what the word "business" includes.

Mr. NELSON. The business of a corporation.

Mr. CUMMINS. The business of a corporation or individual. What does the word "business," as used here and as used generally in connection with individuals, mean?

Mr. NELSON. I will not undertake to define it beyond the purpose of this substitute or amendment. In other words, what is the business of a corporation? Technically the business of a corporation is the work it is intended to do and accomplish under the articles of incorporation. If it is incorporated to carry on the business of a bank, that is its business. If it is incorporated to operate a railroad, that is its business. If it is incorporated to operate a mine, that is the business of the corporation. If it is incorporated to buy and sell land, that is the business of the corporation. In each case the business of the corporation is determined by the articles of incorporation.

Now, the Supreme Court in this Spreckels case passed upon that question. They held, for instance, that in the matter of the wharves, where the company landed the sugar from their own ships, that those wharves were employed in the business of the corporation, but they held that in respect to the money the company had deposited in bank and the dividends or interest derived from that, it was not a part of the business of refining sugar.

Mr. CUMMINS. The Senator from Minnesota has answered a question that I did not ask. I inquired of the Senator from Maryland with respect to the scope and meaning of the word "business." For instance, this measure provides that a trust or holding corporation, a combination that is organized for the purpose merely of holding the stock of other corporations, shall be permitted to deduct from its receipts or gross income the dividends that have been paid upon the stock so held. I was about to ask whether, in the judgment of the Senator from Maryland, the holding of the capital stock of corporations, in order to vote that stock as a unit and thus control the destinies of a great number of consolidated or concentrated corporations, is a business, and would such corporation fall within that term as used in this measure?

Mr. RAYNER. I have not the slightest doubt in my own mind—I do not know what the Supreme Court would decide, but I should like to argue that question before the Supreme Court—that you could tax a business or an occupation.

Mr. CUMMINS. The amendment provides that any corporation may deduct, as a part of its expenses in order to arrive at its net income, the dividends that it has received from the stock of other corporations; and I was rather curious to have the Senator's idea as to whether that kind of a corporation was doing business at all or not.

Mr. RAYNER. Mr. President, then evidently a holding corporation is not taxed under this amendment at all. It is practically not taxed, is it?

Mr. CUMMINS. It is practically untaxed. That is one of the great objections that I have to the amendment.

Mr. RAYNER. It ought to be taxed, ought it not?

Mr. CUMMINS. I think it ought to be.

Mr. RAYNER. And I am decidedly in favor of taxing it, and I believe such a tax would be constitutional upon the privilege of its being a holding corporation. I think it would not operate as a double tax. I think it ought to be taxed. I agree with the Senator from Iowa fully upon that point, legally and otherwise.

Now, Mr. President, I come to the——

Mr. McCUMBER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from North Dakota?

Mr. RAYNER. Certainly.

Mr. McCUMBER. Mr. President, the Senator from Maryland is dealing here with first principles, and I should like to get down to them in considering a case of this kind.

The Constitution, in its definition of a direct tax, certainly includes within its meaning a tax on real estate; and a tax levied upon real estate without the proper apportionment according to population is invalid. The Supreme Court has also decided that a tax upon the income of real estate is likewise invalid. Now, I want to get right down to this proposition. The Senator from Maryland states, and he states correctly, that the Government has the power not only to tax the business of a corporation, but to tax the business or vocation of the individual as well; and I agree with him upon that. Suppose that instead of taxing the income, say, from a farm—because I want to get right down to real estate—you tax the business of farming, and make the measure of the tax the net income from that farm. Would such a law be constitutional?

Mr. RAYNER. Mr. President, that is a very pertinent question, but it is precisely the same question which the Senator from Iowa [Mr. CUMMINS] asked. It involves a little different phraseology, but it is a question of some importance.

Mr. McCUMBER. What I intended to get at, if the Senator will permit me——

Mr. RAYNER. I understand.

Mr. McCUMBER (continuing). Was whether or not, by mere change of words, of phraseology, you can change the construction that the court will place upon the act.

Mr. RAYNER. It appears you can do that to some extent. Can we lay a tax upon farming? That is the question; and that is a question that no Senator in this body can answer, and no member of the Supreme Court can answer until the question is fully argued before it. Can you lay a tax upon professional privileges? Can you lay a tax upon the privilege of practicing medicine? Can you lay a tax upon the privilege of practicing law? I think you can. Then why can you not lay a tax upon the privilege of farming? I think you can, and I absolutely believe that you can do so, but I do not want to venture any opinion here unless I am sustained by the authority of the Supreme Court. If the Senator from North Dakota wants my judgment, if that judgment is worth anything, and were I sitting in a case, I would say, "Yes; you can tax that privilege, and you can measure the amount of money which the farmer makes out of his farm in just the way that you can measure the lawyer's privilege of practicing his profession by the amount of fees that he makes, or the physician's right to follow his occupation by the amount of fees that he charges." I see no difference between them.

Mr. McCUMBER. Then, if the Senator will pardon me, you can make a general income law constitutional by a mere change of phraseology, by saying that it is a tax upon the business, but measured by the net income.

Mr. RAYNER. I am not in any wise responsible for the unfortunate decision of the Supreme Court of the United States in the income-tax case. I do not believe in that decision; I have always thought that that case ought again to be submitted to the Supreme Court of the United States. I am not entirely wedded to that income tax; I do not mean the paying of the income tax; but the people of my State do not like the inquisi-

torial system that accompanies the collection of that tax; but I think that case ought again to go to the Supreme Court of the United States. They overruled the decisions of a hundred years, and they ought to be called upon to say now whether or not that decision shall stand. It is an unsatisfactory decision. It is that decision, and not my argument, that gives rise to this unfortunate distinction; and I think the Senator from Iowa [Mr. CUMMINS] and the Senator from North Dakota [Mr. MCCUMBER] will agree with me on that proposition.

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Utah?

Mr. RAYNER. I do.

Mr. SUTHERLAND. Referring to the question which the Senator from North Dakota [Mr. MCCUMBER] propounded, does the Senator from Maryland think that the cultivation of a farm by the owner of that farm is a privilege? Is it not a natural right?

Mr. RAYNER. Is it a business?

Mr. SUTHERLAND. The practice of a profession may be considered——

Mr. RAYNER. I ask the Senator is it a business?

Mr. SUTHERLAND. I rather doubt whether it is a business.

Mr. RAYNER. If it is not a business, what is it? Is it an employment? Is it an occupation?

Mr. SUTHERLAND. Let me answer the question in my own way.

Mr. RAYNER. Certainly.

Mr. SUTHERLAND. Mr. President, I am very much in the condition of the Senator from Maryland [Mr. RAYNER]. I am somewhat in the fog as to just what the word "business" really does mean; but it does not seem to me that the cultivation of a farm by the owner of a farm can be considered a privilege, and it occurs to me that it could hardly be considered a business, although I suggest that latter proposition with some hesitation.

Mr. CUMMINS. It is certainly a facility——

Mr. RAYNER. Now, Mr. President, let us see about that. Let me call the attention of the Senator from Utah [Mr. SUTHERLAND], who, of course, is a very capable lawyer, to this language of the Supreme Court in the income-tax case:

> We have not commented on so much of it as bears on gains or profits from business, privileges or employments, in view of the instances in which taxation on business privileges or employments has assumed the guise of an excise tax and been sustained as such.

What does that mean? I do not believe that the Senator from Texas [Mr. BAILEY] knows what that means, and, if he does not, I am sure nobody else does. Nobody knows what that means. I am not responsible for that. I think it would be a most ridiculous thing to levy such a tax. Just as the Senator from North Dakota says, you can not tax a man's profits, and you can not tax his farm; but you can tax the privilege, and measure the privilege and value of profits to him. That seems absurd; but there is the case. What does it mean? I am not responsible for the obiter dicta of the Supreme Court in that case and for the illogical conclusion that it arrived at, with great respect and deference to it.

Now, I am coming to the second proposition. I am going to hurry, because I am coming to the last proposition, which is to me the most important one of all. I want to get to the second proposition, and there is not any doubt, I think, about this. The Senator from Nevada raised the point, but I think that upon further reflection there can not be any doubt in the mind of any Senator that this is a uniform tax, because in the Knowlton case the Supreme Court has held that a uniform tax means a tax which is geographically uniform.

I want to call attention to what I think has been a mistake, if I may be permitted to say so, which has been made upon the other side of the Chamber. They have argued this whole case as if it were under the fourteenth amendment. There is the trouble. The fourteenth amendment does not operate on the Government of the United States; the fourteenth amendment operates on the States. While the States can not make an arbitrary discrimination as against the fourteenth amendment, there is nothing on earth to prevent this Government from making an arbitrary discrimination provided it maintains geographical uniformity; in other words, the Government can do what the States can not do. I maintain that proposition here in this body. The Government has interdicted the States from doing what the Government itself can do.

The Government has said to the States, under this amendment you can not make arbitrary distinctions, you can not make unfair classifications; but we can make arbitrary distinctions, the Federal Government can make unfair discriminations, provided that we maintain a geographical uniformity; that is to say, provided that the unjust classifications are maintained in every State of the Union. That is the proposition here, and I do not think any lawyer in this body will disagree with me. There is a geographical uniformity, however arbitrary this distinction may be. It is an arbitrary thing to tax the profits of a corporation and not to tax the profits of an individual; but the Supreme Court has said that you can do that arbitrary thing, provided that you do it with geographical uniformity through the States. I shall not read that decision, because I want to get through.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. RAYNER. I do.

Mr. HEYBURN. Is it not true that, after the Federal Government has levied upon the States for their proportionate share of taxation, the state law governs the method of collecting it, and that we have no power whatever to say how it shall be collected?

Mr. RAYNER. That question is not within a thousand miles of what I am talking about now.

Mr. HEYBURN. It is within at least a hundred miles——

Mr. RAYNER. It might be a good question, but it has no relevancy at all to the question I am discussing.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield further to the Senator from Idaho?

Mr. RAYNER. Yes; but I am discussing three points; and if the Senator will just ask me something in reference to the geographical uniformity point, and not get into the matter of the collection of this tax, I will be very much obliged to him, for I do not intend to discuss the collection feature.

Mr. HEYBURN. I shall not bother the Senator with further interruptions. The interruption was a courteous one, and it was directed to the expression that had last fallen from the Senator's lips; but inasmuch as he preferred to make a rather sharp retort than to answer the question, I will leave it as he has disposed of it.

Mr. RAYNER. I beg the Senator's pardon. If the question has any relevancy at all to this proposition, I wish he would repeat it, and I will be glad to answer it.

Mr. HEYBURN. I am willing to let it stand as it is.

Mr. RAYNER. If the Senator declines to ask me the question again, I must respectfully submit to him that it can have very little relevancy to the proposition that I am discussing. I have yielded again, because I want to throw light on this subject; and if the Senator has a question that relates to the question of geographical uniformity, I will do my best to answer it, and I will be obliged to the Senator if he will ask me the question again.

Mr. HEYBURN. Mr. President, I think the Senator attempted to dispose of my question so quickly that he did not engage in any effort to comprehend it. The Senator had just referred to the relation that the States and the General Government bore to each other in enforcing this taxation, and I then submitted the thought that occurred to me—which is pertinent—that we have nothing to do with the manner in which the State performs the function of collecting the tax; that the State may do it regardless of any restrictions of the Constitution. The restrictions of the Constitution are out of the way when the edict has gone forth from Congress to the States to send up so much money.

Mr. RAYNER. Mr. President, I again submit, with great respect, that that has nothing whatever in the world to do with the proposition which I am discussing. I say that very respectfully. The State does not collect this tax. The Government collects this tax.

Mr. HEYBURN. If the Senator will permit me, if this tax is apportioned, the Government does not collect it at all; the States collect it.

Mr. RAYNER. If it is apportioned?

Mr. HEYBURN. If it is a direct tax.

Mr. RAYNER. Oh, for mercy's sake, do not get into that.

Mr. HEYBURN. Then I will leave the Senator with his eloquence to proceed without interruption.

Mr. RAYNER. Well, Mr. President, if this is a direct tax, that is the end of the tax under the decision of the Supreme Court. My whole proposition is based upon the foundation that it is not a direct tax. If it is an apportionable tax, then it comes within this unfortunate decision; and if it is an apportionable tax or if it is a direct tax, what is the sense of passing the amendment, I should like to ask the Senator from Idaho? If the Senator from Idaho says that this is a direct tax, that has to be apportioned, I should like to ask

him what is the use of passing the amendment, because such a tax has to be apportioned, and as it is not apportioned in the amendment, the amendment is unconstitutional.

Mr. HEYBURN. Well, the Senator had already undertaken to define a direct and an indirect tax and to draw deductions from the conditions that are presented here and to determine whether or not this is a direct or an indirect tax.

Mr. RAYNER. The Senator from Idaho has evidently not heard my argument at all. My argument is that this is an excise tax and not a direct tax.

I pass to the third point, Mr. President. The third point is this—and it has given me some trouble, but I will finish it in a very few moments: Is this amendment an attack or an infringement upon the reserved rights of the States? That is the point that is troubling the Senator from North Carolina and some other Senators on this side. At first it gave me some trouble, but after an examination of the cases the field is perfectly clear. Is this tax destructive of the powers of the States? If it is, it is unconstitutional; if it is not, so far as that proposition is concerned it is good. When we put a tax upon a business conducted under a state charter, does that so far invade the functions of the State as to make this an infringement upon the reserved rights of the State? I only want one decision on that. I must confess I do not like the decision. None of us on this side of the Chamber like it; but there it is; and we can no longer battle with it. The junior Senator from Iowa [Mr. CUMMINS] adverted to it as a distinction between excise and property rights, but I refer to it for one sole purpose, and that is to see how far this Government can lay a tax upon franchises granted by a State. It is the case of the Veazie Bank *v.* Fenno, in Eighth Wallace, page 547. It is only a few lines. This was the case, as we all recollect, that laid a tax of 10 per cent upon the circulation of State banks.

I am only quoting this case now for one purpose, and that is in support of the third proposition that I have advanced—that the proposed amendment is not an infringement upon the rights of the States. Chief Justice Chase delivered the opinion of the court. Mr. Justice Nelson and Mr. Justice Davis dissented. It was argued as ably as any case ever was argued before the Supreme Court of the United States, and, with great respect to that illustrious tribunal, it was decided about as meagerly as any case was ever decided by the Supreme Court of the United States. There it is; and it has been recognized since 1869 in one case after another as the law of the land.

Is it—

Speaking of this tax—

Is it, then, a tax on a franchise granted by a State—

That is, on the circulation of banks chartered by the State—

which Congress, upon any principle exempting the reserved powers of the States from impairment by taxation, must be held to have no authority to lay and collect?

That is where the law stands. I do not know what the opinion of the Senator from Texas [Mr. BAILEY] is upon that point. Perhaps he differs with me upon it. He may think, perhaps, that the Government has a right to lay a tax upon a franchise granted by a State. I do not think so. I find nothing further to aid me in arriving at a conclusion upon that matter except this ambiguous language of the Supreme Court:

We do not say that there may not be such a tax.

Mr. BAILEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Texas?

Mr. RAYNER. Certainly.

Mr. BAILEY. I think the distinction is a clear one. I think it is obviously beyond the power of Congress to lay a tax on any franchise granted by a State to execute any function of the State. I think it is equally clear that Congress has power to tax any franchise granted by a State which bears no relation to a public function.

Mr. RAYNER. That is correct.

Mr. BAILEY. And I think that distinction is made in the very case to which the Senator has referred.

Mr. RAYNER. Then the Senator from Texas and myself absolutely and entirely agree. The proposition could not have been stated better and plainer than the Senator from Texas has stated it; and that is the language of the authorities.

Mr. CUMMINS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Iowa?

Mr. RAYNER. Certainly.

Mr. CUMMINS. Mr. President, without differing from the statement of the Senator from Texas [Mr. BAILEY], I suppose that it will be admitted that the rights of the States and of the United States are mutual in this respect.

Mr. RAYNER. That is correct.

Mr. CUMMINS. That is to say, the States have the same right to tax a franchise granted by the Federal Government that the Federal Government has to tax a franchise granted by the States.

Mr. RAYNER. That is right.

Mr. CUMMINS. And the very latest exposition of that subject, in so far as I know, is found in the case of California *v.* Pacific Railroad Company, in One hundred and twenty-seventh United States.

Mr. RAYNER. I am going to advert to that case in a moment, if the Senator will allow me.

Mr. CUMMINS. But with that understanding and with the definition as modified by the decision of the Supreme Court, I am in entire concurrence with the Senator from Texas.

Mr. RAYNER. I mean to say that when the Supreme Court throws a doubt upon it, they throw doubt upon a proposition that I never had any doubt about; and that is, you can not tax a direct function or agency of a state government necessary to carry out state powers, but that in levying a tax upon the business of a corporation of this sort you do not tax directly the functions or the powers of the state government. Let me read——

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Utah?

Mr. RAYNER. I yield.

Mr. SUTHERLAND. Does not the Senator also find support for his position in the case of Knowlton *v.* Moore? I will not call his attention to the case if he has any intention of referring to it.

Mr. RAYNER. The case of Knowlton *v.* Moore was the Spanish war inheritance-tax case.

Mr. SUTHERLAND. Precisely.

Mr. RAYNER. And the court decided that there must be geographical uniformity, and that the case did not come under the income-tax provision. I am entirely familiar with that case.

Mr. SUTHERLAND. In addition to that, the Supreme Court in that case considered the question as to whether the tax was valid, because the entire control of the devolution of inheritances was under state authority. The court, in discussing that case, if the Senator will permit me, uses this language; which, it seems to me, is very apt to the point the Senator is now discussing:

But the fallacy which underlies the proposition contended for is the assumption that the tax on the transmission or receipt of property occasioned by death is imposed on the exclusive power of the State to regulate the devolution of property upon death. The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest is the transmission or receipt, and not the right existing to regulate.

Mr. RAYNER. I recollect that language.

Mr. CUMMINS. May I interrupt the Senator just once more?

Mr. RAYNER. As often as the Senator pleases.

Mr. CUMMINS. Lest I might by some possibility be misunderstood, let me say that the decision in the California case rested, as the Senator will presently show, upon the tax levied by the State of California upon the Central Pacific Railroad Company. I want it thoroughly understood that my assent to the doctrine announced by the Senator from Maryland, and supported by the Senator from Texas, is limited to the suggestion that the franchise granted to the Central Pacific Railroad Company by the United States was such a franchise as could not be interfered with by the State; and that the Central Pacific Railroad Company, in the performance of its business or duties, was exercising such a function of the Federal Government as removed its franchise from interference upon the part of the State by taxation or otherwise.

Mr. RAYNER. The Senator is perfectly right about that.

Mr. CUMMINS. And therefore the question must be determined in each instance as it applies to a particular corporation.

Mr. RAYNER. Let me finish this case, and let me examine that line of cases. If I do not give them correctly, the Senator from Iowa will correct me. Just let me finish these few lines from the case of the Veazie Bank *v.* Fenno. I think the Senator is perfectly right in his construction of the cases, and it is a most interesting point. The court say:

We do not say that there may not be such a tax. It may be admitted that the reserved rights of the States, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of state government, are not proper subjects of the taxing power of Congress. But it can not be admitted that franchises granted by a State are necessarily exempt from taxation; for franchises are property—

I do not cite this case for that portion of it—

often very valuable and productive property; and when not conferred for the purpose of giving effect to some reserved power of a State, seem to be as properly objects of taxation as any other property.

I am not prepared to say, without any further elucidation by the court, that I would go as far as this. I will tell you what has given me trouble in this case; and I should like to understand from the Senator from New York whether he agrees with me upon that point. I do not believe, if this was a tax levied upon a charter, that it would be a good tax. I do not think, if we were to pass a law here levying a federal tax upon a state charter, upon the power of a State to grant a charter, that that would be a valid tax. I do not know what the opinion of the Senator from New York is upon that point. I draw a clear distinction between a tax levied upon the power of a State to grant a corporate charter and a tax levied upon the business of the corporation to which it grants the charter.

Mr. CUMMINS. I agree to that distinction.

Mr. RAYNER. The Senator from Iowa has all these points under consideration, and we come now—and I will dispose of them in a moment—to just that line of cases. Let us look at them a moment. The State can not invade the functions of the Federal Government, and the Federal Government can not invade the functions of the State. The Government has its powers under the Constitution; the State has its reserved rights, and it would have its reserved rights if the tenth amendment had never been adopted. The tenth amendment never conferred upon the States their reserved rights, because the States possessed those reserved rights. All the tenth amendment did was simply to confirm them; for the States had the reserved rights without the confirmation.

A State can not tax the functions of the Federal Government. I have here Judson on Taxation, a book written by an eminent lawyer of Missouri, who was, I think, the colleague of Mr. Harmon. Strange to say, he is not related to him, but his last name is Mr. Harmon's first name. They were the gentlemen that went out of the government cases, I think—Harmon and Judson. But, at any rate, Mr. Judson is a distinguished lawyer, and he wrote this book on taxation. I have looked at it, but he does not give a full report of the cases.

One of these States taxed the franchise of the Pacific Railroad. The Supreme Court held that they had no right to tax the franchise of the Pacific Railroad, because it was a government franchise. One of the other States taxed the roadbed and other property of the corporation. What did the Supreme Court say? As I recollect, the Supreme Court said that the first tax was unconstitutional and the second tax was constitutional. Why? Because the tax upon the roadbed of a railroad, while it might ultimately destroy the governmental franchise of the railroad, was nevertheless primarily a tax upon the property of the road—though it might operate from a secondary point of view upon the franchise of the road, it was valid.

I am satisfied in my own mind that this is not a tax upon the franchises of a State. If it were, I should never stand here and vote for it. I should lift my voice in a humble protest against such a proposition as that, because, I want to say in conclusion, I have always been what is known as a "States-rights Democrat." I am not ashamed of the title; I am proud of it. I represent one of the original States that signed the covenant, and it is that covenant that ties the Constitution in the bonds of eternal unity. That covenant must be kept sacred and inviolate. On that rock we stand. When that rock disintegrates we perish. Every crumbling fragment of it imperils the Republic. And if during the time I have been in this body I have accomplished no other purpose than that of slightly impressing upon the rising generation that this covenant must be kept intact in all its essential parts and that the reserved rights of sovereign States must be kept inviolate and unprofaned, then I am satisfied with that accomplishment, if I shall never receive another honor at the hands of my countrymen.

Mr. BRANDEGEE. Mr. President, I was called from the Chamber and returned only in time to hear the Senator state that the Government can not tax a franchise granted by a State, but can tax the right to do business under that franchise. I should like to ask the Senator if he can distinguish those two things, with this in view: I had supposed that the franchise is simply the right to transact the business, and I should like to have him draw the distinction between those two things.

Mr. RAYNER. Of course, I had no case in mind except the Fenno case; but I will state my view. I am not sitting in this matter as a judge. I may be mistaken. What are our opinions worth? No one knows what the Supreme Court of the United States is going to decide upon questions of this sort. If you levy a tax on the charter, if you say here that you will tax every charter granted by every State to every corporation, I do not think that would be a good tax. That is my opinion; I do not know. I will state my own judgment. I may be wrong; and I should like to hear the opinions of the Senator from Connecticut and other Senators.

If the Senate committee's amendment had been that the Government lay a tax of 2 per cent upon every charter granted by every State, and measured it by the amount of its capital stock, but laid it upon the charter, upon the right of the State to grant that charter—in other words, if the corporation could not go into existence, not simply into operation, but could not go into existence; if the government tax was a condition precedent that had to be complied with before the charter of the State was valid, I should hold that to be clearly an unconstitutional tax. And to a discriminating mind the proposition is plain that there is a difference between a tax of this sort and a tax levied upon the business of a corporation, to be collected under penalty, and not by forfeiture of its charter, after the corporation goes into existence.

Mr. BRANDEGEE. Of course I did not mean, Mr. President, that the Senator should prophesy what the court would decide. I meant to ask how he would distinguish the two cases in his own mind.

Mr. RAYNER. That is the distinction that lies in my mind.

Mr. BRANDEGEE. Let me ask this question: When the Senator stated that the Government could not tax a charter granted by a State, did he mean that it could not tax it in the hands of the State, or in the hands of the recipient of the charter?

Mr. RAYNER. In the hands of the recipient.

Mr. BRANDEGEE. If the Senator means that, I entirely fail to see how he distinguishes between the right of the Government to tax the charter, which is nothing but the right to do business, and the right of the Government to tax the right to do business.

Mr. RAYNER. One is a forfeiture of the charter and the other is not.

One forfeits the charter upon a condition precedent; the other collects a penalty upon failure to comply with a condition subsequent. That is the best way I can put it professionally to the Senator from Connecticut. The Senator from Connecticut understands, and the Senator from New York will fully appreciate, the difference between conditions precedent and conditions subsequent. One says to the State: "You can not give this charter unless the recipient of your bounty pays a tax." The other says to the corporation: "After you go into business you must pay a tax upon your operations to the Government; otherwise we will make you do it under a penalty of the law."

Mr. BRANDEGEE. But, Mr. President, suppose the Government attempts to impose the tax upon the charter after it has been accepted, and there is no condition precedent about it?

Mr. RAYNER. I am not prepared to say what would be the result if, after the charter had been granted, the act read that the tax should be imposed upon. I am not prepared to pass upon that hypothetical question. These are all hypothetical questions. What do our opinions amount to? If the tax were placed upon the charter after the charter had been granted, measured by the net gains of the corporation, I am not prepared to say whether or not that would not still come within the exception of the Income Tax case.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator yield?

Mr. BRANDEGEE. Mr. President, I was simply going to observe that it seems to me that is just what is attempted to be done in this case.

Mr. RAYNER. Not at all. This is a tax upon the business privilege of a corporation; and the tax is to be measured by the net gains of the corporation. It is upon the business privilege of the corporation; and, as the Senator from Iowa said over and over again, you can place such a tax upon the business of an individual. There is not a particle of difference between the two.

Mr. CUMMINS. Precisely.

Mr. RAYNER. You can not make any distinction; you have a perfect right to do with an individual what you can do with a corporation.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Iowa?

Mr. RAYNER. I have finished, Mr. President. I yield the floor.

Mr. CUMMINS. I hope the Senator from Maryland will not yield the floor for just a moment, because I think it will help him to apply the principle he has announced if I read the law upon which the California case arose.

Mr. RAYNER. There is one thing, Mr. President, that I want distinctly understood. I do not want any mistake about it, publicly or privately. That is, I am only trying to justify my vote. I do not like this amendment at all. I am going to vote for the income tax, and I am going to give it all the earnest, sincere, and zealous support that I can. I think it is an honest and a fair tax. I am simply justifying my vote when I am driven to the wall and compelled either to vote for this or to vote for nothing. And that is the reason I have made this argument here to-day.

Mr. CUMMINS. I think I understand fully the position of the Senator from Maryland. But we have reached an interesting question of law here. I do not rise to deliver an address, because I intend presently to make some observations upon the address of the Senator from New York. But before the Senator from Maryland abandons the floor I want him to know specifically just what the law was in the California case; for I know he will then be able to apply the principle so that we can easily see the distinction which is sought to be made.

In California, as in many States, the taxes are assessed generally through local officers; but railways and the like are assessed by a state tribunal; and that is probably distributed through the various counties. This is the law:

> The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State shall be assessed by the state board of equalization as hereinafter provided for. Other franchises, if granted by the authorities of a county, city, or city and county, must be assessed in the county, city, or city and county within which they were granted.

Under that statute the state board of equalization assessed the Southern Pacific Railway Company, or the property of the Southern Pacific Railway Company. The Supreme Court of the United States held that to be unconstitutional because the State had no power to assess the franchise of the Southern Pacific Railway Company, which is, of course, its right to do business as a railway company.

Mr. ROOT. Mr. President, I think proper respect for the gentlemen who have engaged in the discussion of the precise language of the first paragraph of this measure this morning should lead me to say a word regarding the origin of that language and the scheme of the draftsmen in phrasing the bill as they did. I think it will be seen that it is not a question whether the particular words used are the best words, whether "for" or "upon" are better words than "with respect to." I think it will be seen that there can not be any such question here.

Senators will recall the words which have often been read here as used by the Supreme Court in the Income Tax cases. The Supreme Court said:

> We have considered the act only in respect of the tax on income derived from real estate and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such.

Out of that language plainly grew the provisions of the act of 1898, the war-revenue act. The income-tax decision was rendered late in 1894 or early in 1895. I think the argument of the first case was in December, 1894, and the decision of the second was in the spring of 1895. Three years after that, when Congress came to draft the war-revenue act, it took advantage of the opening thus exhibited by the Supreme Court in the paragraph I have read and drew the clause imposing a tax upon companies doing the business of refining petroleum, of refining sugar, and so forth.

The measure which is before us reproduces, ipsissimis verbis, the words of the war-revenue act imposing duties upon companies engaged in refining sugar—that is, so far as the description of the imposition of the tax went as an excise tax. Those words were:

> That every person, firm, corporation, or company carrying on or doing the business of refining petroleum, or refining sugar, or owning or controlling any pipe line for transporting oil or other products, whose gross annual receipts exceed $250,000, shall be subject to pay annually a special excise tax equivalent to one-quarter of 1 per cent on the gross amount of all receipts of such persons.

And so forth.

It will be perceived that there Congress does not say anything about what the tax is imposed on. It does not say it is a tax for anything or a tax upon anything. It says that the persons and corporations engaged in doing a particular business shall be subject to pay——

Mr. BRANDEGEE. Mr. President——

Mr. ROOT. Will the Senator permit me to finish first? Then I will yield.

Mr. BRANDEGEE. Certainly.

Mr. ROOT. The act says that the persons and corporations engaged in doing a particular business shall be subject to pay a special excise tax equivalent to one-quarter of 1 per cent upon receipts. That language is reproduced in this measure. It is:

> That every corporation * * * organized for profit and having a capital stock represented by shares, and every insurance company * * * engaged in business in any State or Territory of the United States * * * shall be subject to pay annually a special excise tax * * * equivalent to 2 per cent upon the entire net income.

There is added to that language another expression, quite superfluous it may be, but an expression taken from the language of the court used in describing the character of the tax which was imposed by the war-revenue act. And that language of the court is:

> Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business of refining sugar.

That language is put into this measure, being added to the language of the war-revenue act which was passed upon by the Supreme Court in the Spreckels case. So that we have here the language of the act which the Supreme Court passed on in the Spreckels case; and we have, added to the language of that act, our legislative declaration that the tax is of the character which the Supreme Court declared the tax in the Spreckels case to be.

I think that this language which we have added, "with respect to the carrying on or doing business by such corporation, joint-stock company, or association," is, perhaps, superfluous. I think it is probably unnecessary to the perfection of the act, but I think it does strengthen the act. I think it does obviate the possibility that any court should ever have any doubt that Congress meant this to be exactly what the court in the Spreckels case said the tax was:

> Clearly the tax is not imposed upon gross annual receipts as property, but only in respect of the carrying on or doing the business.

For this reason, because of the origin of these two expressions, the one embodying the language of the statute passed upon in the Spreckels case and the other embodying the language of the Supreme Court in describing the character of the tax in the Spreckels case, the question before us is not one of changing words. If that were done, the whole purpose, the whole object with which the clauses are introduced, would be lost. We should take those clauses as they are, or not take them. We can leave out what the court said in the Spreckels case; but if we put it in, we should put it in in the language of the court, for to change it takes away all of the purpose of employing any phrase at all.

And as I think, Mr. President, that this clause adds an element of strength, decreases the possibility of misunderstanding of our purpose, and is a legitimate declaration of legislative intent, following the judicial declaration of the intent of a similar statute, it seems to me the wisest course for us to pursue is to leave the measure as it was framed.

Mr. BRANDEGEE. Mr. President——

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Connecticut?

Mr. ROOT. Certainly.

Mr. BRANDEGEE. I have been trying to get an idea as to whether this tax is imposed upon the corporation because it is doing business, is imposed upon its business, or is imposed upon the corporation. The Senator from New York has pointed out very clearly what is evident to all—that the act does not say "that a tax is hereby imposed upon a corporation," or that it "is hereby imposed upon a business" or "the transaction of its business" or "its net income." But it does say that "every corporation * * * shall be subject to pay * * * a special excise tax with respect to the carrying on * * * business."

I can not conceive that that language means anything else than "because it is carrying on business." I think the Senator from New York will agree with me that the tax is imposed upon the corporation because it is doing business. He states that the language "with respect to the carrying on" of its business may possibly be superfluous, as it seemed to me this morning. I have no objection to the language if it is simply descriptive, but my suggestion this morning was that I thought it could be made perfectly evident that the tax is imposed on the corporation because it is transacting the business it has been chartered to perform.

Mr. CUMMINS. Mr. President, may I ask a question of the Senator from Connecticut [Mr. BRANDEGEE] or the Senator

from New York [Mr. ROOT]? I have no great concern about the precise words that are used here. I agree entirely with the Senator from New York that it does not make any difference. The essential question is, "What are you trying to do?" It is answered, "He is trying to apply the principle of the Spreckels case."

Congress, in looking around for an object of taxation, believed that those who were engaged in the business of refining oil or that of refining sugar could well bear a tax, because, I assume, of some peculiarities relating to those kinds of business. It therefore imposed a tax upon the business, or upon those engaged in the business, of refining oil and refining sugar.

But let us see with respect to the present measure. Congress does not in this case select any kind of business which it believes ought to bear a tax. It does not impose any tax upon all the persons who are engaged in any kind of business. It selects corporations or joint-stock companies. If I were sitting as a judge, if I did not believe this to be a tax upon property, I should hold it to be a tax on property or on income; and I should sustain it as constitutional, because I believe it to be constitutional. But if I were driven to the position of holding it to be a tax on business, then I should be compelled to hold it to be a tax upon the business of being a corporation—a tax upon the business because it is carried on by a corporation; not because the business has any peculiarities or characteristics or is able to afford a revenue, but because it is conducted by a corporation. And when we are driven to that point in the argument the tax becomes one upon the franchise of the corporation; and under the decision which I think is the last expression of the Supreme Court upon the subject it becomes unconstitutional, as is admitted on almost all hands.

I want to say that much in reply to the suggestions that have been made here with regard to mere words. I do not believe it makes any difference what words we use, because the court will, as it always has and as it always ought to, reach in beneath the husk and discover the real purpose of Congress.

Mr. ELKINS. Mr. President, I should like to ask the Senator from New York just what the words "with respect to the carrying on or doing business" mean? I should like to put that question to him. If he were a judge on the bench or speaking as a distinguished Senator and able jurist, what would he say those words meant? Ordinarily he would say: "Why, they are very clear." But they are causing a great deal of trouble in this discussion, and I should like to have the Senator state what he thinks or knows they mean.

Mr. ROOT. Mr. President, I do not want to contribute to the trouble. I think there is altogether an unnecessary amount of trouble on the subject, and I do not think I can make the words any clearer by any gloss or explanation of mine. I think we all know what the carrying on of business means. I should despair of trying to make it any clearer.

Mr. BACON. As the Senator is being interrogated as to the meaning of these words, I should like to have his understanding of certain words the construction of which are somewhat doubtful to my mind. The Senator has quoted from the income-tax decision this phrase from the Chief Justice which is quoted in the Spreckels case. The Senator has read it. The first two lines are these:

> We have considered the act only in respect of the tax on income derived from real estate and from invested personal property.

I should like to know what the Senator understands to be the meaning of the words "from invested personal property" in that connection? I want to say to the Senator, I am not asking the question simply from idle curiosity, but in view of some other questions connected with this case which those words might throw some light upon. I will say that I have never been able to clearly understand what the court meant in that particular connection. Of course we all understand what invested personal property is, but what classification did the Supreme Court have in mind when it used in the connection "of an income derived from real estate and from invested personal property?"

Mr. ROOT. Mr. President, I think there is a clear line between the two kinds of treatment of personal property, and I assume that the court had that line in mind. There may be, first, an investment in personal property which is not used by the investor, as to which he is passive.

The purchaser of bonds remains quiescent and receives the interest from time to time as it accrues and is paid. The lender of money upon bonds and mortgages does the same, and the lender upon notes does the same. That kind of income which is not associated with any activity or any use on the part of the owner, I understand to be the income from invested personal property which the court had in mind in the first part of the clause, while on the other hand personal property is widely used and must be widely used in the activities of life. The workman uses his tools, the merchant his stock of goods, buying and selling and transporting, taking it from the place where it is worth but little to the place where it is ready for the uses of mankind. The great body of the business of life is done by dealing with personal property on the basis of real property; and that kind of investment, the ownership of the tools, the implements, the materials used in the activities of business life, I understand to be the subject of the second part of the clause.

There was the difference between the two that I think led the court to say that they have considered only the tax on incomes from invested personal property and had not commented on so much of it as bears upon the gains or profits from business privileges or employment.

Mr. BACON. Now, if the Senator will pardon me a moment, we recognize that the general language "invested personal property" would cover not only investments in bonds and things of that kind, to which the Senator has alluded, but would cover investments in all other kinds of personal property. If I understand the Senator correctly, his idea is that the intention of the court was that that absolutely idle property, upon which men live without effort by simply clipping coupons, was intended by the law to be beyond the reach of Congress to tax, whereas all the property which goes into the great activities of life may be subjected to onerous taxation. Is that the view of the Senator?

Mr. ROOT. I think, under the decision in the Pollock case, the property which the Senator speaks of as idle, which is only idle for the investor——

Mr. BACON. That is what I am speaking about.

Mr. ROOT. Of course, it is the representative of somebody else's activity, and I think it is protected against taxation now according to the rule of apportionment, while the other, being incidentally employed in connection with the business of life, is subject to an excise tax or duty, whatever it may be called, which is free from the rule of apportionment.

Mr. BACON. The result is that this property which is thus represented by bonds is practically to be exempted for all time from taxation, because if that interpretation is correct, bonds could only be taxed through apportionment, and we know that on account of conditions which have been explained here in this argument taxation through apportionment is practically impossible.

It will never be resorted to because of its gross inequality; one section would be so much more taxed per capita than another, and one particular locality so much more under direct apportionment than it would be under an ad valorem. Then the natural and necessary result is that the property which I have denominated as idle property, and which I do not think I have incorrectly denominated, is to be for all time exempted from taxation, whereas the class of property which enters into the great activities of life, and out of which our prosperity is to be developed is the property which will be exclusively hereafter burdened with taxation.

I speak of the investment of bonds, and so forth, as the idle property. In a sense, of course, it has been created by great industry and great labor, but taxation at last falls upon the man who owns the property, and the man who owns the bonds and who is himself not engaged in the industry which produces the interest out of which he lives is absolutely to escape, so far as that particular investment is concerned, though he lives upon the use of the labor of others. For myself I am not willing to subscribe to any proposition which will lead us to so very undesirable a result as that.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Rhode Island [Mr. ALDRICH].

Mr. ELKINS. I will ask the Senator from New York, if he is in charge of the measure, if 1 per cent would not be enough instead of 2? I should like to have somebody answer as to the amount of revenue that would be derived from 2 per cent and the amount to be derived from 1 per cent. I do not see any member of the committee here, and I should like to have the Senator from New York state if any attention has been drawn to the matter as to how much revenue would be produced with 2 per cent and if we could do with 1 per cent.

Mr. ROOT. I took occasion yesterday to make some remarks upon the woeful lack of information that we have here at the seat of government regarding the corporate interests and activities of our country. I think the question put by the Senator from West Virginia served to enforce what I said. We ought to have here definite, well-ascertained, and tested information which will enable us to answer such questions. But we have not. The best means by which we could get a result was by

taking unofficial figures that had been published in various magazines and made up by gentlemen who are interested in the subject, and the estimate which the President gave of $25,000,000 seemed to be a reasonable estimate. But there are so many unknown quantities that it is not much more than a guess, and no one can speak definitely.

Mr. ELKINS. I see the chairman of the committee is in the Chamber now, and I will ask him the question that I put during his absence to the Senator from New York. What amount of revenue will 2 per cent bring, and could we not get on with 1 per cent? I think, outside of this amendment and without resorting to special taxes at this time, there are other custom and internal taxes that would raise all needed revenue.

Mr. ALDRICH. As the Senator from New York has just said, it is very difficult to make any accurate estimate of the revenue which would be derived from this tax. My own estimate would be at least twice that of the President. I think it will produce at least $50,000,000 per annum, and I am inclined to think more than that. It is quite impossible, however, to say just what revenue would be produced.

Of course, in response to the other question about 1 per cent, the Senator from West Virginia realizes that my own estimate of the amount of revenue to be produced by the measure itself, with the changes that have been made in the Senate, is that we shall have sufficient revenue without any additional taxes. So it is impossible for me to say whether $25,000,000 or $50,000,000 additional should be required. Of course, for this fiscal year there was a deficit outside of the canal of $60,000,000. I estimate that there will be a deficit the next fiscal year of approximately $40,000,000. It is my impression that beyond that the bill itself will take care of any expenses that are now in sight. Of course, involved in that question is as to what the course of Congress is to be with reference to expenditures. If we are to enter upon a new era of extravagance or of enlarged extravagance, no revenues that are now in sight will be sufficient to meet the expenditures of the Government. If, as I hope and believe, we are to enter upon an era of intelligent economy, then I believe that the revenues to be derived from the bill as it now stands will be sufficient to meet all the expenditures of the Government.

Mr. ELKINS. Just one more question, if the Senator will allow me. With the other ways of raising revenue, placing duties on many other products, would not 1 per cent be safe under the Senator's estimate, and he knows more, I think, about this question than anybody connected with the making of this bill?

Mr. ALDRICH. I should not be willing at this moment to make an estimate of that kind or to state. I will say that I am engaged in making some inquiries along several lines with a view of making a more intelligent estimate, or approximate estimate, of the income to be derived from this tax than I am now able to make. I hope before the bill passes from the consideration of the Senate to be able to state in a more definite form an estimate of the revenue to be expected.

Mr. CUMMINS. Mr. President——

Mr. BRISTOW. Will the Senator from Iowa yield to me for a minute or two?

Mr. CUMMINS. I yield to the Senator from Kansas.

Mr. BRISTOW. Mr. President, I desire to read two letters that I have and make some observations bearing upon the question now before the Senate. A hardware merchant in the State of Kansas writes me as follows:

> We are a corporation, doing business beside a firm that does about the same amount of business that we do. We will be taxed at the rate of probably $1,000 per year, and our competitors will pay nothing. I am not sufficiently posted to discuss the constitutionality of such a measure, but certainly there is no equity nor justice in a measure of this kind.

I have also a letter from a gentleman engaged in the dry goods business, and in that letter he says:

> Is it fair and consistent with the American idea of fairness and a "square deal" to tax our net earnings—taxes which will come out of the dividends to our stockholders, very many of whom are men in very moderate circumstances and working every day for a living and the support of their families—simply because we are doing business under a charter, while a neighbor doing business as an individual or under a copartnership is entirely free from said tax? And further, does the proposition reach the very wealthiest citizens, such as Rockefeller and Carnegie, whose holdings are not in stocks of corporations, but in bonds? * * *
>
> We have neighbors on either side of us, one doing business as a copartnership, the other as a private individual. Both are engaged in mercantile business, each employing about the same capital as ourselves, yet under the proposed law we would be compelled to pay 2 per cent of our net earnings, but they would pay nothing. Would they not as a result of this very law have an undue advantage over us simply because we are conducting our business under a charter and they are not?
>
> You may ask the question, Why are we, then, doing business as a corporation? Simply because it furnished a way for us to allow some of our employees of small means to become interested in the business by allowing them to become shareholders.

Now, Mr. President, I am told by the lawyers that the advantage of doing business as a corporation is sufficient recompense for this additional tax that is being imposed. I am sorry I can not agree with the lawyers. I will not undertake to discuss the constitutional questions involved, for I but poorly comprehend the fine technical distinctions that are made here between the different plans that are alleged to be constitutional and unconstitutional; but I believe I do know that when two men are engaged in identically the same business in the same community, selling goods to the same people for practically the same prices, under similar conditions, and one man prefers to do business under a charter and let his employees share with him the profits of that business, it is not right or just for the Government of the United States to impose upon him a tax and relieve his competitor, who may be doing business as an individual or copartnership, from that tax.

The Senator from New York [Mr. ROOT] yesterday said that an income tax would be unfairly distributed, because the States of New York, Massachusetts, and some other of the eastern States that are densely populated would have to pay a larger share than western States. If the western Senators representing States in this body will think for a moment, they will conclude that an income tax on the incomes of individuals exceeding $5,000 would raise more revenue for the Government from the State of Kansas than this tax law, because there will be more men who will pay it. It would then include the bondholders and those who have large fortunes that are not reached by this tax. It would more equitably distribute the burden as to population than this corporation tax.

Senators, it is not my purpose to discuss this question. I have read from these letters and made these observations to give the reasons why I do not intend to vote for the amendment offered by the Senator from Rhode Island. I vote against it because I believe it is unjust; that it is wrong; that it is an unequal tax; that it places burdens that are not equitable; and I can not vote for it believing, as I do, that it would be an injustice to many of my constituents.

Mr. DAVIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Iowa yield to the Senator from Arkansas?

Mr. CUMMINS. I yield to the Senator from Arkansas.

Mr. DAVIS. Mr. President, the correspondent of the Senator from Kansas [Mr. BRISTOW] seems to overlook the advantage of a corporation over the private individual. While his two neighbors, one upon the right and one upon the left, engage in a partnership and each as a private individual escapes the burden of this taxation, he must remember that he escapes liability for the debts of the copartnership except to the extent of his stock.

I am opposed to the amendment of the Senator from Rhode Island as a substitute for the income tax, but I shall vote for it should the income tax fail—in other words, I choose the lesser of the two evils. We find that the corporations of the country are invading every avenue of business and trade. In my State we have trust companies formed for the purpose of transacting every kind and character of business. They administer upon your estate; they are guardians for your children; they absolutely carry their business to such an extent that it closes up the avenue of every individual effort. The individual is entirely destroyed and the law-made creature takes his place. Whenever an individual seeks an opportunity for employment or for business, he finds the door closed to him by the law-made creature, the corporation.

My stand, Mr. President, is that if we can not tax all the corporations, we should tax just as many of them as we can. If you can not tax the big ones and the little ones, too, then tax the little ones. Get them all, if you can; if you can not get them all, get the biggest number that you can. That is my principle. If we can have the income tax, let us have that.

I shall vote, first, against the amendment of the Senator from Rhode Island as a substitute for the income tax; then, if it is substituted, I shall vote for it as a substitute.

Mr. BACON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Iowa yield?

Mr. CUMMINS. I yield.

The PRESIDING OFFICER. Does the Senator yield the floor?

Mr. CUMMINS. I yield to the Senator from Georgia.

The PRESIDING OFFICER. Does the Senator yield the floor?

Mr. BACON. As the question is raised, I will not ask the Senator to yield.

Mr. CUMMINS. I am quite willing to yield to the Senator from Georgia for any purpose whatever.

Mr. BACON. I am quite sure of that.

The PRESIDING OFFICER. The Senator from Iowa will proceed.

Mr. CUMMINS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Aldrich	Clark, Wyo.	Gallinger	Page
Bacon	Crawford	Gamble	Perkins
Borah	Cullom	Gore	Piles
Bourne	Cummins	Guggenheim	Rayner
Brandegee	Curtis	Heyburn	Root
Briggs	Daniel	Hughes	Scott
Bristow	Davis	Johnson, N. Dak.	Shively
Brown	Depew	Johnston, Ala.	Smoot
Bulkeley	Dick	Jones	Sutherland
Burkett	Dillingham	Kean	Taliaferro
Burnham	Dixon	Lorimer	Taylor
Burrows	Dolliver	McLaurin	Warner
Burton	Elkins	Money	Wetmore
Carter	Fletcher	Nelson	
Chamberlain	Flint	Overman	
Clapp	Frye	Owen	

The VICE-PRESIDENT. Sixty-one Senators have answered to their names. A quorum of the Senate is present.

Mr. BACON. Will the Senator from Iowa yield to me for just a moment?

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Georgia?

Mr. CUMMINS. I yield to the Senator from Georgia.

Mr. BACON. Mr. President, I desire to offer an amendment to the amendment of the Senator from Rhode Island [Mr. ALDRICH]. I do not now ask that the question be decided whether it can be properly offered at this time; but I desire to have the amendment read, and whenever it is in order I shall offer it.

The VICE-PRESIDENT. The Senator from Georgia now presents an amendment for information, to be read and printed in the RECORD.

Mr. BACON. I do.

The VICE-PRESIDENT. The proposed amendment will be stated.

The SECRETARY. It is proposed to insert at the conclusion of the first paragraph of section 4 of the amendment proposed by Mr. ALDRICH the following:

Provided, That the provisions of this section shall not apply to any corporation or association organized and operated for religious, charitable, or educational purposes, no part of the profit of which inures to the benefit of any private stockholder or individual, but all of the profit of which is in good faith devoted to the said religious, charitable, or educational purpose.

Provided further, That the provisions of this section shall not apply to incorporations or associations of fraternal orders or organizations designed and operated exclusively for mutual benefit or for the mutual assistance of its members.

Provided further, That the provisions of this section shall not apply to any insurance or other corporation or association organized and operated exclusively for the mutual benefit of its members, in which there are no joint-stock shares entitled to dividends or individual profit to the holders thereof.

Provided further, That the provisions of this section shall not apply to any corporation or association designed and operated solely for mercantile business the gross sales of which do not exceed $250,000 per annum.

Mr. BACON. I want to make, with the permission of the Senate, the explanation that I have broken the amendment up into several different provisos, so that they may be, if so desired, separately voted upon; otherwise, if any of them should be adopted, the amendment would have to be recast so as to make it simply one proviso. The purpose of making several provisos was, what I have indicated, that the Senate might pass upon them separately.

Mr. CUMMINS. Mr. President, I have already sufficiently taxed the patience of the Senate, I am sure; whether it be directly or indirectly, it is not for me to say, but I can not allow this debate to come to a conclusion without saying a word with respect to certain views advanced by the Senator from New York [Mr. ROOT]. It is to be very much regretted, I think, that those views were not brought before the Senate when this amendment was originally launched, for if they had been I believe that the debate that has ensued would have been very materially limited.

I care nothing about that charming chapter or recitation respecting the genesis of this measure. I am a great deal more concerned in its exodus than I am in its genesis. I have not accused anyone nor shall I accuse anyone of inconsistency with respect to its origin or to its progress. I have little concern anyway about consistency. As I remember, Mr. Emerson once said that consistency is the hobgoblin of small men and mean minds; and I never pause to inquire whether the advocate of a particular measure has been consistent or inconsistent, for I am always ready to assume that the position taken at the time is taken at the suggestion of conscience and of judgment. However, I do desire to review very briefly some of the arguments which have been submitted. I say now if I am unmolested I shall not occupy the time of the Senate more than thirty minutes. Mark you, I do not forbid interruptions, for I shall receive them as they come; but if I am unmolested I shall endeavor to conclude within the limit I have suggested.

The Senator from New York, in that delightful way of his—and it is always a charm to listen to his words and to witness the operation of his mind—expressed several objections to the general income-tax amendment for which I stand. I do not intend to take them all up, but I do intend to refer briefly to three of them.

The first—and it seems to me the one which is nearest his heart—related to the impropriety of passing a law that challenged the decision of the Supreme Court; and he painted a picture, from which we instinctively shrank as we looked upon it, which in glowing colors seemed to portend a great campaign if the general income-tax law should find favor in Congress; that it would be followed by a fierce, hot campaign among the politicians or statesmen of the country in every State, and that their thunders and their clamors would knock at the door of the Supreme Court for the purpose of overcoming the integrity and stability of the members of that exalted tribunal; that the newspapers would pour out their criticisms upon the law or their plaudits upon the law; that those criticisms and those plaudits would find their way into the chambers of the Supreme Court and there assault the citadel of judicial virtue, and that we would have the spectacle of this tribunal deciding a great question of constitutional law under the influences thus aroused.

I compliment the Senator from New York upon the effective way in which he painted this picture, but I am sure it is but the product of his fancy. If we were to pass this law, the United States would go quietly on; there would be no campaign; there would be no issue in political parties respecting it; there would be no storm, but there would be calm everywhere; and in the end, when the case reached the Supreme Court, it would be presented in the dignified manner common to the practice before that tribunal; and the judges, whose tenure of office is secure, who are beyond the influence of the political world, would decide the case according to the justice and the reason of the law. There would not be, as I view it, a single wave of unrest passing over the sea of our life or of our business. Our confidence in this great tribunal would remain unimpaired, because that confidence exists, notwithstanding our knowledge that it may at times mistake the law, that it may at times employ false reasoning, and that it may at times reach unsound conclusions. I beg that you will put away the suggestion that there is any impropriety in asking this tribunal again to examine, again to determine, one of the most vital powers conferred upon Congress by the Constitution of our fathers.

The Senator's next objection to the general income-tax amendment was that it had a tendency to array the East against the West, especially that part of the income-tax provision which exempted incomes not in excess of $5,000. Again, I believe he did scant justice to the intelligence and the patriotism of the American people. I believe that we are strong enough to rise above these accidents in the distribution of wealth. It happens that a great proportion of the accumulated wealth of the United States lies within a narrow compass of our country geographically; it happens that these vast and swollen fortunes, in which many thinking men and many profound statesmen find a menace to our institutions, lie in the eastern portion of our territory. It is naturally so, because in the East is found the cradle of our business, and the progress and the development of the West are but the children of the activity and enterprise of the East. There is no prejudice in the portion of the country from which I come either against wealth, or against wealth because it finds its home chiefly along the eastern border of our land. If, however, we are to tax wealth—if that be our purpose—we must tax it where we find it. It can not be removed from the East to the West; and if we are always to allow wealth to escape, if we are to allow it to shift, if you please, the burden that it ought to bear in the affairs of government, because to tax it is to impose burdens greater in the East than in the West, then we will never tax wealth in proportion to its distribution.

The amendment for which the Senator from New York stands at this moment will do measurably what he claims the general income-tax amendment would do. It will rest more heavily upon the East than the West; and so far and to the extent that we tax wealth it must always so rest until we transfer—as I hope we will some day—the scepter of financial power to the Mississippi River Valley, and then I pledge you that its inhabitants will not ask that wealth be exempted from taxation

or from its burdens because it has found its home upon the prairies of the western country.

The Senator's next objection was that the general income-tax amendment made no discrimination between earned and unearned incomes. I grant you that is a just criticism. The Senator from New York may recall my own view upon that subject expressed to him personally. I believe that there should be a discrimination between earned and unearned incomes. I believe also that there should be graduated taxes on incomes; but I found when I came to ascertain the sentiment of Senators that these propositions seemed somewhat socialistic to them, and therefore, desiring to create no further or greater objection than was necessary and to secure an announcement of the general principle, these modern, these intelligent conceptions of taxation were omitted from the measure as I introduced it; but I will join the Senator from New York at any time in putting into the law these clearly just provisions, these discriminations between the income which is the result of the work of the mind or the result of the immediate work of the hand from the income that arises from long-invested capital.

But I dissent from the Senator from New York wholly in his proposition that the plan of the committee accomplishes this difference or this distinction between earned and unearned incomes. You will remember that it was his proposition that a tax upon the net incomes of corporations imposed a tax upon unearned incomes rather than upon earned incomes, and exempted that active, restless capital which constitutes the real progress of our industrial and commercial world. I dissent from that proposition. On the contrary, I believe that the tax levied upon the net incomes of corporations taxes the very capital and the very incomes that the Senator from New York was so desirous should escape the heavy hand of the Government. I do not say that there is not some unearned income taxed when you lay this burden upon the corporate income, for there is some of this sort of invested capital taxed; but not so greatly as the live, moving capital of the country, which constitutes the real power and the real arm of commerce. Let us see.

Any corporation that divides its investment into capital derived from bonds and from capital stock is a good illustration of the point I am endeavoring to make. The men who invest their money in bonds are the conservative men, the men who do not want to share the vicissitudes and the dangers of business, the men who are not willing to incur the risk and hazards of an enterprise carried on for profit; and they, therefore, take the bonds of corporations. The income arising from those bonds is the very sort of income which the Senator from New York declared, and declared very wisely and very truly, should bear a tax and a heavy tax, or at least a heavier tax than the incomes that arise from the sagacity and the business shrewdness of the men who are engaged in the particular enterprise.

Let me now transfer my thought for a moment to the money that is invested in the capital stock. In our country, filled as it is with little corporations, the men who invest their money in the capital stock are the young, aggressive, energetic men. They are the men who are doing the business of the country, and they are investing in the capital stock of corporations not an accumulation of fortune, but their earnings, their salaries from month to month and from year to year. Therefore it is not true, as the Senator said, that this tax with respect to such corporations divided itself along the equitable and the modern and the intelligent lines which he so distinctly and clearly pointed out.

But, not only so, there is another kind of capital that is taxed here, which I am sure the Senator from New York will see in a moment ought not to be taxed under any such provision. I mean the capital of insurance companies. An insurance company—I refer now to the mutual insurance companies, and nearly all insurance companies are mutual insurance companies—has no money except that which is paid into it by its policy holders—not one penny. The tax that is sought to be placed upon that capital by this amendment is a tax upon the premiums paid by policy holders, in order to do what? Either to gather a fund which may support them in their old age or to protect their families against want after the provider is gone. Every dollar that this amendment extracts, or will extract, from men who pay premiums for life insurance, for accident insurance, for fire insurance, is just so much more laid upon these people, who, of all others, ought to be tenderly dealt with in devising systems of taxation. Therefore I am not ready to admit that the amendment offered by the Senator from Texas and myself is subject to the criticism suggested by the Senator from New York; and certainly I am not willing to admit that the amendment for which he stands sponsor remedies the defect so pointed out.

I pass to my objections to the amendment, and I want to record them just as emphatically as I can. I know that we are making an issue in this measure. I know it is an issue which will be fought out among the people of the United States. It will never be settled until it is settled right, because we are about to ignore the vital principles of organized society.

I am opposed to the measure reported by the committee because it discriminates unfairly and unjustly between the people of the United States and because it lays its burdens, not upon those who are able to bear them, but upon all who happen to be shareholders in corporations, without regard to their ability to pay or the extent of the property which they may have accumulated. I am opposed to it because it serves the purposes of the mighty corporations of the land. I have not heard that any of them have lifted up their voices in opposition to this measure, and they ought not to. Why? Because it is to take the place of one which would not only tax the net incomes of the corporations themselves, but would follow into the hands of the rich and the great the fortunes which they have accumulated either through individual or corporate enterprise.

I do not wonder that a man like Morgan is in favor of this measure, for although his corporations will bear some part of this taxation, his own vast fortune will be untouched. I do not wonder that a man like Harriman should favor this measure rather than the general income tax; because the part of his great fortune, which has been segregated from the corporations in which he is interested, lies beyond the operation of this law. I do not wonder that all these conspicuous examples of riches and of financial power should favor this measure; because while it taxes some part of their investment in a corporate way, it leaves untouched the very part that the American people are most interested in reaching and subjecting to the power of taxation. And the reason these great corporations are not protesting against this measure is that they are all dominated and controlled by the men who, by virtue of this substitution, will escape the taxation that we seek to impose upon them by virtue of the general income-tax law. It is a perfectly natural support; it is a perfectly natural approval. I am not criticising the motives of anyone; I am simply analyzing a situation which must be as obvious to the casual observer as it is to the deepest thinker.

I am opposed to this measure because it does not provide the publicity which is recited here by some Senators as its greatest merit. The Senator from New York [Mr. ROOT] frankly claimed that the general income-tax law which we have proposed is faulty because it allows the officers of the law to investigate the affairs of corporations, and does not require them to secure the explicit direction of the heads of the departments in Washington before they attempt to ascertain what the incomes of these corporations are. I am in favor of publicity.

The measure we have proposed does not go far enough in exposing to the public gaze the affairs of corporations, but the committee amendment stops far short of ours. It will do no good to secure information and hide it under the seal of some officer in the Department of the Treasury, or the Department of Commerce and Labor, or the Department of the Interior. The Government, if it desires to institute a suit for the violation of one of its laws, has no trouble in discovering the evidence. It never has had trouble. It never will find difficulty. It is not in putting the Government in possession of this knowledge that we find the greatest value of the instrument of publicity. Publicity means general knowledge. Publicity means the condemnation of public opinion visited upon a wrongdoer. That is the value of making public the operations of the affairs of corporations—so that the men who control those corporations will be restrained, because they do not want to fall under the condemnation of their fellow-men.

There is no force in organized society so strong as the desire to stand well with our fellow-men. There are a great many people who are willing to violate the law if they can violate it without the knowledge of those whose confidence and whose respect they hold dear. Therefore the publicity that any such law ought to create, if it be a feature of the law at all, is a publicity that will reach the minds and the knowledge of all the people of the country. But this measure does not provide that publicity.

I am opposed to the substitute because it creates a rank, gross, indefensible discrimination between corporations themselves. It exempts from its operation the mutual savings banks of New England, but embraces the mutual insurance companies of the West, of which there are a very great number. I do not say it was by design; I only know it is true. In New England

a dozen men, or fewer, will associate themselves together for the organization of a mutual savings bank, and invite the people in all the country around to deposit their money in the bank. I suppose the officers receive pay, but otherwise they receive no profit from their connection with the institution.

Mr. BULKELEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Connecticut?

Mr. CUMMINS. I do.

Mr. BULKELEY. I merely wish to state to the Senator that in New England it is not possible to organize a savings bank in the way he suggests, except by a special charter. There is no general law providing for the organization of savings banks.

Mr. CUMMINS. I do not regard that as a material point. I only know that they can come together and in some fashion or other organize a savings bank. It matters not to me whether it is under a general law or whether it is under a special act of the general assembly. The officers get no profit out of the enterprise, though I suppose some of them are paid reasonable salaries. These banks are organized to give the people an opportunity to deposit their money in a secure place, so that it can be put out at interest, and so that the profits which arise upon their deposits can be distributed among them. That is the purpose of the savings bank of New England.

What is the purpose of a mutual insurance company? Exactly the same. It is organized so that a number of people, who can not afford to carry the risks of life or the hazards of the business in which they may be engaged, can deposit their money in a secure place, so that it may be invested safely and profitably, and then, when the event transpires, it can be distributed to those who are entitled to it.

I should like to know why it is thought proper in this measure to tax the payments on the part of members, or policy holders, of mutual insurance companies and not tax the deposits of the mutual savings banks? Mark you, I am not contending for the taxation of the mutual savings banks. I can hardly imagine a government so hard hearted and so insensible to the natural relation of men and business as to impose an income tax or a business tax upon the mutual savings bank. But my wonder is that the same sentiment which exempted them did not carry itself into the exemption of all other kinds of companies or properties which bear practically the same relation to the world as do the mutual savings banks.

Mr. GALLINGER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from New Hampshire?

Mr. CUMMINS. I do.

Mr. GALLINGER. I will ask the Senator precisely what class of companies he has reference to. I think we have mutual insurance companies in the East as well as in the West. They are not peculiar to the West.

Mr. CUMMINS. Oh, no. I mentioned them only because we have so many more of them in the West than are found in the East.

Mr. GALLINGER. I suppose the Senator means companies organized by the Grange, we will say, as an illustration?

Mr. CUMMINS. No. In the city in which I live there are probably 20 mutual insurance companies.

Mr. GALLINGER. Are they life or fire insurance companies?

Mr. CUMMINS. Some of them are life insurance companies, some of them are fire insurance companies, and some of them are accident insurance companies. There is no profit whatsoever derived from any of them. The officers receive fair salaries, and every penny of the money that is collected from the members of these mutual insurance companies is paid back in some form or other to their members.

Mr. GALLINGER. Manifestly, then, that is an institution that prevails to a much greater extent in the West than in the East; and I shall certainly be very glad to join with the Senator from Iowa in having those companies exempted from the operations of the proposed law.

Mr. CUMMINS. I am simply pointing out something of what I conceive to be the inequalities and injustices of the law. I do not regard that inequality and that injustice any greater or any more worthy of criticism than the general discrimination between capital invested in shares and capital invested otherwise. May I continue that thought for just a moment? In our State there is hardly a county in which the farmers do not organize what are known as "county mutuals," largely for protection against fire. Under our law they are all organized for profit. They are all mutual companies, and they organize in order to emancipate themselves from what they believe to be the domination or the extortion of the old-line fire insurance companies.

Mr. GALLINGER. They make assessments, I presume.

Mr. CUMMINS. Every dollar that is paid into one of these companies will be taxed under this amendment. In the same way, our farmers found that the great creamery companies of the land were extorting from them unfair profits and paying them unfair prices for their products. So they organized mutual creamery companies; and all over our State such companies are to be found. Again, we discovered that the elevator companies, in combination with the railways, had monopolized the business of buying grain, and that our farmers were at the mercy of the companies which actually transported their product to the market. Therefore they organized mutual elevator companies; and all over our State are found such companies. Yet the money distributed from time to time, and all the money that is paid into such companies, barring the small expense of conducting the companies themselves, will be taxed under this law.

I can not think that these things were in the contemplation of the lawyers and the statesmen who drew this measure; but they are inherent in it. When you begin to discriminate, there is no good place to stop; so the rule was made general. And I repeat what I said yesterday or day before, that the general clause bringing insurance companies into the "income-tax law," as I call it, is unwise; for I know that there is no part of the capital employed in the business of the United States that is so heavily taxed as the money paid by the policy holders of insurance companies. And therefore these insurance companies were excluded by the terms of the amendment proposed by the Senator from Texas and myself.

It is all wrong. Without regard to the constitutionality of the law, it is not founded in justice, and it can not receive the approval of the American people.

I have no sympathy with the suggestions made by the Senator from Arkansas. I hope they were not the sentiments that animated the men who drew this amendment. I hope that they were not engaged in simply a blind effort to punish corporations. There are some corporations that ought to be punished; but the great mass of the corporations of the United States are as innocent, and are as just, and are as upright as the individuals who carry on business in the United States. They exist only through severe and continued struggle in the great battle where competition is the dominant weapon. It is not right to put upon all these corporations, with their great variety of shareholders—poor shareholders and rich shareholders, shareholders who can pay and shareholders who can not pay—this burden which is proposed, especially when it is now acknowledged upon the floor of the Senate that when you are taxing business you can tax individual business just as constitutionally as you can tax corporate business.

I hope that a better spirit will prevail in the Senate. I appeal from Philip drunk to Philip sober. I hope there will be a careful review of the principles upon which this measure is founded before it is approved by the Senate.

I understand that by those who originally proposed the measure—and I accept the genesis and development recited by the Senator from New York—nothing but the public good was desired. Far be it from me to suggest that there was an ulterior purpose or motive in the original conception of this measure. I know that it was in the mind of the President to find some way in which a tax could be laid that would be in harmony with the decisions of the Supreme Court. But there is a chapter of that development which must be forever closed, and which would add something to the genesis of this measure—a chapter that would at least explain some of the earnestness and some of the persistency with which I and some of my colleagues have pursued the measure.

I want Senators to understand what they are about to do, because the people of the country will understand that it is the shareholders, little and big, who will pay this sum. They will not know anything about excise taxes. They will never stop to inquire whether this is a direct or an indirect tax. They have no time and possibly no learning that will enable them to inquire into the nice discriminations that have been so prominently placed before the Senate this morning. They will know just one thing, and that is that whereas their rich neighbors who are not engaged in corporate enterprises pay no tax, they, because they have endeavored to forward the progress and speed the development of their country, and have taken shares of stock in corporations of an almost infinite number of kinds, have been selected, as it would seem, by the folly of their Government, to bear a burden which they ought not to bear, except in company with others who are similarly situated.

But, Mr. President, I have reserved my most emphatic objection for the last. I object to and protest against this measure because it not only recognizes if it does not legalize—and I will not say that it does—the right of holding companies to

gather together the stock of scores of other companies, and thus create the thing we call a trust or a combination or a consolidation, but it entirely or substantially exempts such a company from taxation. It is monstrous, as it seems to me, when viewed in the dispassionate moments of reflection.

I do not say there is here any authority for the organization of a corporation to hold the stock of other corporations. I do not think there is. But there is here a recognition that some of the States may permit corporations to be organized for the purpose of holding, or that do hold, the stock of other corporations. There are not many States in the Union in which corporations can be organized for the purpose of holding the stock of other corporations. I do not know that there are many States in the Union in which that can be done; but I am not prepared to assert that there is no State in which such authority can not be given.

Mr. CULBERSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Texas?

Mr. CUMMINS. I do.

Mr. CULBERSON. I will ask the Senator if the charter of the Southern Pacific Company does not expressly authorize it to hold the stock of other railroads?

Mr. CUMMINS. I have not examined the charter in order to advise myself; but of course that corporation was organized by act of Congress.

Mr. CULBERSON. It was organized by the State of Kentucky.

Mr. CUMMINS. The State of Kentucky? Oh, the Senator is speaking of the Southern Pacific Company. It may be that that is so. As I say, I am not sure. I suppose there are some States under the laws of which companies of that kind can be organized.

Mr. CULBERSON. I will state to the Senator from Iowa, from recollection—I investigated the matter when I had the honor to be the attorney-general of our State—that I found that the Southern Pacific Company was organized by the State of Kentucky, and authorized to own the stock of other companies, particularly railroad companies, and it was prohibited by the original charter from holding the stock of companies in Kentucky. But subsequently the last matter was abrogated by an amendment to the charter. I think, however, that the company is still expressly authorized by its charter to hold stock in and operate other railroads.

Mr. CUMMINS. Mr. President, I accept the statement of the Senator from Texas. I have no doubt it is true. It may be that there are some States in which companies have been so organized, or in which they may, under their statutes, be so organized. I hope, however, there are but few of them. Without regard to that, it is ill advised, it is impolitic, it is wrong for the Congress of the United States at least to recognize any such corporation or any such law. And I protest against a measure which gives to such corporations even the bare recognition of their existence.

Mr. NEWLANDS rose.

Mr. CUMMINS. I yield to the Senator from Nevada.

Mr. NEWLANDS. I call the Senator's attention to the fact that the Northern Securities Company was organized for the purpose, as I understand it, of holding the stocks of other corporations; and I will also state that it has been quite customary in the far West to relax the incorporation laws. It was found that some of the Eastern States, such as New Jersey, were practically absorbing the incorporation of these concerns, and the far Western States gradually relaxed their laws, so that many of them now authorize the organization of holding companies. Whether or not they are purely holding companies, I do not know, but I am sure the practice has become quite general. I quite agree with the Senator, however, in his condemnation of the practice.

Mr. CUMMINS. I recognize, Mr. President, that the General Government can not direct the policy of the States in this respect, unless, possibly, the corporation is engaged in interstate commerce or in some other wise brings itself within the regulatory power of the Constitution. My protest and objection are based upon giving to any such corporation any standing in the policy or in the law of the United States, no matter where it is or how it was organized or who created it. I repeat that there is not here given any right to exist; but the existence is recognized, and more than that, the existence is subsidized as well.

What is done? I want to read now from this provision. I read from the second paragraph, which relates to the method of ascertaining the net income of companies, that part of it which specifies those items which must be deducted from the gross receipts in order to ascertain the net income:

Fifth. All amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies subject to the tax hereby imposed.

I had hoped that Congress would never extend its recognition to this policy upon the part of any of our States, but inasmuch as we can not destroy the policy by legislation let us not attach a premium to it. Why is a company organized to hold the stock of other companies? I will not pursue the motives of those who organize such companies, but sum them all up by saying it is because they find it exceedingly profitable to do so, because they can aggregate power in that way, preserve unity in that way, direct and move great industrial forces in that way. And yet this law takes a dollar that comes into the hands of such a holding company, profitable as such companies are, and because it has been taxed somewhere else it is exempted from the operation and the tax of this statute.

Why do you not look at the money that comes into the hands of an insurance company and find whether it has been once taxed, and if you find it has exempt it? Why do you not look at all the dollars that come into all the companies organized under the statutes of our States and find whether they have been taxed, and if they have exempt them from further burden?

I submit to you, Senators, that if you pass this measure in which you exempt the money that comes into the hands of the trusts and the combinations that are created by holding companies from taxation, you will already have condemned it, and the people will simply hasten to register their verdict upon it. There is no reason why it should not be taxed again because the business, if that be a business, of a holding corporation is just as valuable as the business of any other corporation. If you are going to tax the business of the country, then tax it equally, tax it fairly, and the people will applaud and support the law. But if you do not they will reject and repudiate the law.

I intended to say a word with regard to the legal aspects of the measure. I dealt with it from this standpoint at very great length in a former speech. I can only recapitulate my views with regard to the constitutionality of this measure. If you will not think me filled with vanity, I can express my opinions better by assuming that I am the judge before whom it comes for interpretation and construction.

If this amendment came before me as a judge I would hold that it was a tax upon the property of all the corporations of the United States, a tax measured by the net incomes of all these corporations, and I would hold that it is constitutional, because I believe that Congress has the power to levy a tax upon the income of these corporations; and therefore I, for reasons which may be different from those which move others, would hold this law, unjust as it is, to be constitutional.

But if I were compelled to go further and assume that this did not lay a tax upon the property or the income of corporations and seek for some other construction or interpretation of the statute, then I would hold that it is a tax upon the franchise of the corporations, that it is a tax upon the business of the corporations, simply because they are corporations, and I am unable to distinguish a tax upon the business of a corporation simply because it is a corporation from a tax upon the right of the corporation to do business. It may be that there are minds here so keen and penetrating as to discern some difference between those two things, but I can not. I grant that Congress has the power to levy a tax on any business, upon any occupation. I grant it has the power to levy a tax upon any profession. But it has been the habit heretofore, when Congress wanted to levy a tax on business, to specify the business upon which the tax was to be laid. It has been supposed that the business thus selected and segregated from other kinds of business was a business that was peculiarly fit to be taxed as Congress might direct. But when you group all the business of the United States into one law, and simply say that there shall be a tax laid upon all the business, then if you add to that the statement that it is to be laid only on business done by corporations of the country, you have in effect not levied a tax upon business or upon the carrying on of business, but you have levied a tax upon a corporation, upon the right, the privilege of a corporation to do business at all. That would be my interpretation of this statute.

But I pass one step beyond. If it is true that this is a tax upon the business of corporations, and if it is true, as it is everywhere admitted, that we can constitutionally tax the business of the individual and the copartnership just as effectually as we can tax the business of a corporation, answer me, Why make the discrimination? Tell me why you segregate the busi-

ness of corporations from the business of individuals and copartnerships. When you have answered me that question you will have drifted again back, arguing in a circle, as these arguments have been, mostly, to the proposition that you are taxing the business of a corporation because it is a corporation and because it is not an individual or a copartnership.

Senators, I do not believe that such a law will stand. I do not mean that it will not stand the investigation of the courts. I mean that it will not stand the criticism of the people, who are above all courts and all legislatures and all other authorities of the land.

In order to clearly make the point that I suggested when I interrupted the Senator from Maryland, I wish to recur for a moment to the case of California *v.* the Pacific Railroad Company. I have already stated the law under which this case arose. I merely want to read one paragraph of it from the opinion of the court with regard to the power of a State over a franchise granted by the United States. On page 41 I find the following:

> In view of this description of the nature of a franchise, how can it be possible that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? Taxation is a burden, and may be laid so heavily as to destroy the thing taxed or render it valueless. As Chief Justice Marshall said in McCulloch *v.* Maryland, "the power to tax involves the power to destroy." Recollecting the fundamental principle that the Constitution, laws, and treaties of the United States are the supreme law of the land, it seems to us almost absurd to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the government that confers it. To tax it is not only derogatory to the dignity, but subversive of the powers of the government and repugnant to its paramount sovereignty.

That statement of constitutional principle is supported by a long list of authorities with which Senators, I have no doubt, are familiar. It is admitted that the Federal Government has no greater power over a franchise granted by a state government than a state government has over a franchise granted by the Federal Government, and therefore the principle laid down in this decision is as pertinent and controlling in the matter under discussion as it was in the case thus decided.

It may be that there is some virtue in the distinction pointed out by the Senator from Texas [Mr. BAILEY] and the Senator from Maryland [Mr. RAYNER]. I need not pursue that, because the law that you now propose to enact rests with equal weight upon the railway companies, upon gas companies, upon electric light companies, upon street railway companies, and upon all the other public or semipublic instrumentalities of the land. Therefore if that decision be sound and if this measure does levy tribute upon the franchise of such a corporation created by the State, it will go down before the constitutional criticism that will be leveled against it.

I hope, Mr. President, for the honor of our party, the good name of a Congress which should desire always to do equity between all the people, that this substitute will not be adopted.

Mr. HEYBURN. Mr. President, I desire but a moment the attention of the Senate. When the parliamentary situation affords the opportunity, it is my purpose to move to strike out all after the word "tax" on line 10 of the first page down to and including the word "to" on the first line of the second page and to insert the word "of" preceding the numeral "2" on line 1 of the second page. I make this statement now because the parliamentary situation that will confront us after the adoption of the substitute for the amendment of the Senator from Texas sometimes moves rather rapidly. I intend to vote for this substitute to the amendment of the Senator from Texas because of the parliamentary situation that confronts us. I then expect to vote against the adoption of this amendment and for the adoption of the joint resolution to amend the Constitution so as to confer power upon Congress to levy an income tax.

Mr. HUGHES. Mr. President, I apprehend that few measures have been presented to this body which have had presented in their support such conflicting reasons for that support. We have been told by one whose permission therefor was essential to its introduction that he favored this amendment because it would secure the defeat of an income-tax amendment. We have been told by a distinguished Member of this body on this side this morning that he believed this amendment to be dishonest and unjust, and yet that he should vote for it; of course, not because it was dishonest and unjust, but notwithstanding it possessed those objectionable qualities. The distinguished junior Senator from New York [Mr. ROOT] has given us a most interesting historical sketch of the genesis of this most important measure, demonstrating that he is for it, and intimating that the President is for it, because it is an income tax.

For my part, I must now oppose it, because it has the attributes ascribed to it by the Senator from Maryland [Mr. RAYNER], and for other reasons I believe that it is unjust. I hesitate to apply to it the harsher language of being dishonest, which was so emphatically attached to it by the Senator from Maryland. I believe it is unjust, because it does not contain the essential element of every fair and just tax—equality in the burdens it imposes. It is not only unequal, but it is avowedly, intentionally, and grossly unequal in matters of wide extent and vast concern. I look upon it as being further objectionable because it contains in its provisions an irritant intended to excite the indignation of the people against it to the end that it may be speedily repealed after it shall have served its avowed purpose of preventing other and beneficent legislation.

I can not, therefore, under these circumstances bring myself to advocate or favor a measure brought into this body for the purpose of defeating beneficent legislation. I am averse to accepting that which is in its nature maleficent because I can not secure something which is beneficent. It is remarkable, Mr. President, that in the genesis of this amendment which has just been given us, a history half revealing and half concealing the things which we would like to know, it is disclosed that it grew out of the desire and announcement of the President of the United States that an income tax should be laid by act of this Congress.

We have had quoted here as supporting or sustaining that suggestion words of the President, which I called to the attention of this body some days ago, in which the President, in his speech accepting the high honor of the nomination of his party for the Presidency, declared that in order that a valid income-tax law might be enacted a constitutional amendment was unnecessary, and in which he further declared that an income-tax law could and should be devised that would not be obnoxious to the constitutional requirement as to direct taxes.

But the result here presented has been the most marvelous transformation imaginable, because it would seem that the President directed his learned Attorney-General to draw an income tax, and he has written for us not an income tax as distinct from an excise tax, if such a distinction could be maintained, but an excise tax, or at least a measure providing for a tax thus labeled. It further seems that it is hoped and claimed that by thus labeling the amendment, by the mere act of imposing upon it as its name "special excise tax," there is escaped what would otherwise have been a fatal collision with the Constitution as it is now construed by the Supreme Court.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Colorado yield to the Senator from Maryland?

Mr. HUGHES. Certainly.

Mr. RAYNER. I understand the Senator referred to the remark I made about the measure being dishonest. I was speaking of political dishonesty on account of the statement made by the Senator from Rhode Island, that it was brought forward just for the purpose of defeating the income tax. I had no idea in my mind of any personal dishonesty, I will say to the Senator.

Mr. HUGHES. I thoroughly understood that such was the meaning of the Senator from Maryland, that he had reference to the inherent character of the amendment and the avowed purpose with which it found its way into this body.

But, Mr. President, this amendment, it is claimed, provides for an excise tax, while it is asserted it is not an income tax—if those who contend that an income tax is not an excise tax could be accurate in such a distinction—which to me is inconceivable. It is whatever it is, and, if there is a difference, the one or the other, not because it is labeled the one or the other, but because in its nature, in its substance, it is the one or the other. I have no sympathy with that acuteness and astuteness which plays fast and loose with the language of legislation with the hope that by using one phrase you may accomplish a purpose constitutionally, while by omitting a line or a phrase, the substance and real effect being identical, you come into inevitable and unescapable collision with the Constitution itself.

I repeat, if this law be that which the President directed to be drafted, an income tax, and it is laid upon—includes—all incomes of every character, and from every source it is directly and unmistakably in conflict with the decision in the Pollock case, and there is no refinement of language, there is no subtlety of thought, there is no ingenuity of expression that can dull the edge of that clear, well-marked identification.

We are told that it is an excise tax laid upon something not clearly defined or stated, and yet when we make inquiry here in an honest desire to know the nature of this legislation and clarifying amendments removing vagueness are suggested we are warned that we must not lay the finger of irreverent change upon the draft made in camera by a law officer of this Government. Thus this legislative body is stripped of the

power even to amend or make plain or definite or understandable the legislation which it is demanded it shall enact.

Mr. President, what has become of another great feature of this Constitution which seems to have been lost sight of in that suggestion? Do we still exist in three coequal departments? Do we still have the legislative, judicial, and executive, coequal divisions of the Government, or is the legislative swallowed up now by the executive? Have we reached the point where the President directs the Attorney-General to draw a law which Congress, without inquiry or change, must adopt even if discussion should disclose faults and objectionable features? Is it something of political sacrilege and insurgency for the Senators of this body to inquire into the meaning of phrases and to endeavor to correct the errors which they think they detect in the phraseology of this peculiar legislation?

Are we to believe that the Senators who announced that proposition measured fully the force of what they were saying? Here is where legislation should be enacted, fashioned out by the hammer of argument upon the anvil of discussion. Here is where men are to consider the language to be employed for the purpose of ascertaining whether it embodies the meaning or carries out the purpose of those enacting it or another purpose. At the last, and only when freely, carefully, and intelligently the legislative branch has completed its work does the Executive, who may suggest, but can not legislate, by his veto, if he does not approve, condemn and make ineffectual that which has been sought to be done by us.

But we are told that it would be dangerous to remove a word out of this carefully considered measure. In response to inquiries made by the senior Senator from Georgia [Mr. BACON] we were told that somebody, somewhere, but not in this body, considered this and considered that important question, but no one has revealed what was said in that consideration or by whom or what the reasons were which resulted in the adoption of this particular language, the inclusion of these provisions, the exclusion of others, and we are asked to accept this recently introduced amendment with no other disclosure than the fact that some gentlemen have given some thought and study and consideration to this measure, at their leisure or in haste, as the case may have been; that we must accept the language which they have adopted and inquire no further. I do not believe it is in accord with the spirit of this body—I know it is not in conformity with the Constitution nor with the spirit of our institutions—to accept ready-made legislation of this sort, under dictation, without inquiry, without discussion, without liberty of amendment, even though to proceed in the accustomed way means that we must linger a while longer in this torture chamber where legislation, it seems, is to be the result of physical exhaustion rather than of mental consent to the laws which are proposed.

I think it is legitimate, Mr. President, to inquire into the language of the amendment, to learn whether there is a difference, or but a seeming difference, between this amendment and the one it would displace, and whether there may not be lodged the fatal seed of its own dissolution in the text of this proposed law; so that when it shall have accomplished its purposes here, it, too, shall meet the headsman in the Supreme Court and that speedy death, which we are told will meet an income-tax law, if it again enters those sacred precincts. Not knowing who drafted it; not knowing when it was drafted; not knowing how nearly it approaches that draft, which, it is said, was borne to the Ways and Means Committee of the House and which that body rejected as not proper, in its judgment, for it to present or which it deemed less efficient for the purpose they sought than the law they made, yet we are asked to accept it blindly and unhesitatingly.

The inquiry is made as to what it is. I want to submit that, if preambles have no effect in changing the substance and meaning of the body of a law—and many times the Supreme Court and every court in the land and every writer upon the subject has so announced—is it not proper to inquire, then, may a parenthetical expression introduced ostentatiously into the body of the proposed law change its nature when all of the other features of it which go to its substance and real meaning remain unchanged?

I desire to call attention for a moment to the language which is supposed to accomplish this purpose. It is said that these various corporations named shall be subject to pay annually—what?

A special excise tax with respect to the carrying on or doing business by such corporation.

"With respect to the carrying on or doing business," not with respect to the business done or carried on by them. Yet those who defend its constitutionality say that this is not a tax on the privilege of doing business, the franchise from the State authorizing it to do business; that it does not relate to the nature of the business done; that it does not go to the character of the occupation permitted or indulged in by those corporations is clear; but that it is with respect to the carrying on business or doing business; in other words, with respect to being a corporation capable of transacting business or engaging in it—the very thing which we have been told by those who justify the constitutionality of the law is not within the taxing power of the Government as here attempted to be exercised.

I shall not undertake to state how, in my opinion, the law may be upon that matter, but those who defend the proposition tell us that it is not the very thing which the language suggests it to be; that there is no right to tax the power conferred by the State in the creation of the corporation to be, to exist, to do business, which is its franchise, and that which gives it corporate life.

The Senator from New York [Mr. ROOT], in justifying this tax as constitutional, and for that purpose attempting to distinguish it from the Bailey-Cummins amendment, in the report said that corporations possessed two powers that were of great value. One was that of persistence in existence, and the other was the exemption of stockholders from individual liability, both of which qualities are the very creatures of the franchise conferred by the State, are a part of the existence of the corporation itself, and are no part of the business which they conduct.

If this amendment had said "upon the business of farming by all corporations engaged in farming, upon all manufactures of all corporations engaged in manufacturing, upon the business of transportation companies conducted by corporations engaged in transportation," we would understand that it was intended to be what is sometimes called an "occupation tax" laid upon the occupation of conducting the business of transportation, the business of farming, or the business of manufacturing; but there is no such thing as the business of being a corporation. Being a corporation is not a business, is not an occupation. We might as well say that a man was engaged in the business of living, of existing, of being a man. The occupation is the employment, the business in which he engages, the thing that he does, as conducting a commercial or manufacturing enterprise. That is the business. But when you talk about the business of being a corporation, or the privilege of doing business as a corporation, you come back, unless you juggle with words and play triflingly with their meaning, to the proposition that the thing taxed is the existence as or franchise of being a corporation, conferred only by the State, carrying with it in the case of many of the most important of the corporations in our State a function of the State—the power of eminent domain, a part of the sovereignty of the State itself, transferred to or vested in the corporations there engaged in building ditches, railroads, and doing numerous other businesses, with which we are quite familiar in the West. It has been so held everywhere and at all times that this is a power or a franchise conferred by the State out of its own sovereignty, and it can not be taxed, so we are told here by those who advocate the adoption of this amendment.

Mr. RAYNER. May I ask the Senator a question?

Mr. HUGHES. Certainly.

Mr. RAYNER. In the State of Colorado is the right of eminent domain vested in any particular corporation, as the Senator claims, or is there a general law vesting that right in all corporations?

Mr. HUGHES. By statutes providing for the creation of these corporations named, and some others specially, the right of eminent domain is given.

Mr. RAYNER. In those particular cases, but not generally?

Mr. HUGHES. The laws themselves are general, but the corporations are of special nature. The requisite number, by complying with the law, may create a corporation for that special purpose or for that business. The law has, then, the force of conferring the right of eminent domain.

Mr. RAYNER. Has every corporation in Colorado that power?

Mr. HUGHES. No; only those of the character which I have indicated.

Mr. RAYNER. But an overwhelming number of corporations in Colorado have such power?

Mr. HUGHES. Not an overwhelming number of corporations, but in capitalization a large amount is represented by corporations created under these laws, which corporations have that power. Our railroads have it, and there are many millions of dollars invested in them, represented by their stocks and bonds. Our ditch companies may have this power, and there are millions of dollars invested in them. I might go on and call a list of such corporations and point out that their power and their value is very materially the result of the possession of the right of eminent domain.

Mr. RAYNER. Take insurance companies in your States, and I will ask, Have they that right?

Mr. HUGHES. They have not.

Mr. RAYNER. Mr. President, do commercial organizations have the right of eminent domain——

Mr. HUGHES. What does the Senator mean by "commercial?" Mercantile?

Mr. RAYNER. Yes.

Mr. HUGHES. No, sir.

Mr. RAYNER. The same law, I should presume, would apply.

Mr. HUGHES. Not the law granting the power of eminent domain. But, I repeat, the railroads, which have their millions of outstanding stock and their millions of outstanding bonds, upon which the interest is paid, though dividends may not be paid upon the stock, have this power, and will pay nothing into the coffers of the Nation as a result of this tax if it is levied, because of the earnings which are paid out in interest upon bonds; and unless dividends are paid on stock, then not at all. I think it is unnecessary here or anywhere to discuss the legal proposition that you may not write into a law a definition or a characterization of the tax for which it provides, and thereby convert it into that kind of a tax, when, if those words of characterization were omitted from the law, the tax would be another kind of tax.

Mr. RAYNER. Mr. President, did I understand the Senator to say that the railroads would not be taxed?

Mr. HUGHES. I did not so say. They pay state taxes, but I do not know of a railroad in Colorado now the bonds of which would be taxed under the proposed amendment, and I do not know of a railroad in Colorado that is not paying interest upon its bonds, and I know that not all of the railroads in Colorado are paying dividends, and I do not now recall a railroad, save one, that has not a bonded debt as large as its stock capitalization. Usually the stock and the bonds are issued for the property of the company, and sometimes the par value of the bonds secured upon the property is not received by the company issuing the bonds.

Mr. RAYNER. Mr. President, in that connection, does not the Senator think that we could levy a tax on the interest on the bonds?

Mr. HUGHES. I think so; but this amendment does not do it. I am against the amendment to some extent because it does not. Again, there is the fact that, in my humble judgment as a lawyer, the authors of the amendment have not removed any constitutional objections which could be urged against a conceded and frankly presented income tax, and what are therefore applicable to the tax provided for by this amendment by writing "special excise tax" across the face of it. I do not believe there is any necromantic power in legislation which enables a legislature, by the brand which it puts upon a law, to change its essential nature. It seems to me that is attempted by these words, to which such potency has been attributed; for it is said, if they go out of the amendment, although every feature of levying the tax and defining those who shall pay it, of assessing and collecting it, and penalizing disobedience of the provisions of the law remain there absolutely as before, yet, if these words go out of the proposed law, the result would be most dangerous and this omission would bring the law into collision with the Constitution—would annul it. My claim is that the effect of this insertion is only to brand or label the law and to which resort might be had in case of doubt and uncertainty as to its character and meaning, but which will not be permitted to change the unmistakable substance of the law itself.

Mr. RAYNER. Let me ask the Senator this question: Suppose, as I said before, we were to name specifically in this provision every corporation in the United States—of course that would be an impossible task—but suppose we could sit down and write a bill giving the names of all the corporations in the United States, would that, under the Sugar Refining case, be an excise tax?

Mr. HUGHES. If you levied it upon the business which they do?

Mr. RAYNER. No; just levied a tax on every corporation in the United States, under the Sugar Refining case, would that be an excise tax?

Mr. HUGHES. If upon the business, defining it, of these companies, then I should say under that case it would be an excise tax, but other important questions would arise under that case and under the Constitution if that should be done.

Mr. RAYNER. Then, will the Senator explain why in this case, without naming all the corporations specifically, but using words which include them all, the tax would not be an excise tax under that decision?

Mr. HUGHES. It is apparent that the business or occupation of the corporation is not the object sought to be reached by this law as was attempted to be done by the peculiar and guarded language of that act which the court construed in sustaining the validity of that particular act. I do not believe that anyone who studies this amendment believes that it is the business conducted which is sought to be taxed; but the incomes of these corporations are in fact sought to be subjected to the tax, while the language of the act is——

Mr. RAYNER. Mr. President——

Mr. HUGHES. That is what was said in the President's message; that is what he said in his speech of acceptance; that is what he told his Attorney-General to do—to draw an income-tax law that would be consistent with the construction of the Constitution; and that is what this is in its essence, in my judgment—an income tax, a tax upon all incomes from all sources of the corporations enumerated.

Mr. RAYNER. Does the Senator think we can levy an income tax upon the occupation of individuals?

Mr. HUGHES. An income tax?

Mr. RAYNER. Well, a tax upon the occupation, measured by the income of the individual.

Mr. HUGHES. I presume you might measure it by what you chose, if it was in reason, though I have never conceded that omnipotent power of legislation to this body which I have heard attributed to it here to-day, nor do I believe that it may make black white and white black, which I believe Mr. Blackstone once said was about the only impossible thing in the way of legislative enactment by the British Parliament.

I do not believe that. I believe an act must be reasonable, must have some justice in it, notwithstanding the requirement as to uniformity in the Constitution may not be specifically applicable. I do not believe the Constitution has delegated to the Federal Congress the right sweepingly and without limitation to be unjust, iniquitous, and avowedly dishonest in the enactment of laws, I do not believe that; and there are courts and writers who have challenged that suggestion, and, I think, successfully. But when you ask me if Congress might levy a tax upon an occupation, I say, "yes," and they have done so over and over again. If you ask me how they may measure it, I say that is largely the subject of legislative discretion. If you put to me an extreme case, and ask me if they may by some unjust standard make it outrageously high, then I must respond that you are using terms of characterization, and I will have to inquire just what is meant and what, in fact, is done. I do not otherwise know. I do not think it is necessary now to go into the field of speculation upon that subject. But I turn to deal with this proposed tax.

It is not by specific provision upon the business done by a corporation. It is called a "corporation tax." It is said to be a tax upon corporations. We may then ask whether it is a tax upon their existence or franchise to be corporations, or upon the income which is derived from their various businesses and from all their various sources of income. If I were left unaided by anyone connected with the authorship of this document to go to its language, as we ought always to be able to go, and from it learn its meaning and find what was intended, I should conclude that when it said that all these corporations "shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation * * * equivalent"—it does not say "measured by," but "equivalent to 2 per cent," upon what? "Upon the entire net income over and above $5,000 received by it from all sources during such year, exclusive of" certain eliminated amounts cut out for the purpose of getting at the net result, I should say that it levied a tax upon the income and measured it by a certain per cent annually upon the income, less certain deductions, which are permitted, and I believe I would then give a fair characterization of its language and its purpose to the act. But if I should know that those who drew it were aware that there was a contention by one set of contestants that a law upon this subject would be pronounced unconstitutional by the Supreme Court, and by another that the Supreme Court would reverse a very doubtful decision rendered by it lacking all those elements of positiveness which are convincing, and I should find this language in the act, I should say that it was a device intended to enable the court gracefully to sidestep an unpleasant task and render a different decision without coming into that direct conflict with a former decision which would result if it confronted the proposition directly and in perfect frankness.

Mr. RAYNER. Mr. President, does the Senator think this amendment is unconstitutional?

Mr. HUGHES. I think it is constitutional if the Pollock decision is not the final utterance of the Supreme Court upon

an income-tax law; but if that decision is to stand in its full force, I believe this amendment is just as obnoxious to the opinion the court pronounced against the income tax of 1894 as that law was. I do not believe that in the point of attack there is any difference in them. We are playing with words when we say we are going to tax you, but we are going to make it an excise tax; we are going to take every kind of income you have, whether derived from your business or not, whether it be a donation or from any other source, which comes into your coffers, and which is not expended for certain purposes—we are going to tax all your income—and then say this is a special excise and not a direct, not an income, tax.

Mr. RAYNER. Did not the Supreme Court play with words in the Spreckels case? As I recollect, one of the principal sources of income there was from a wharf. The income was not from ships of the sugar-refining company, but from the rental value of the dock where they received vessels. I think that case is subject to criticism decidedly, but the question was whether the rental value of the wharf was taxable, and in that decision the Supreme Court held that it was taxable. Is not that right?

Mr. HUGHES. I do not exactly so understand. The Supreme Court said in effect, in reaching its result, that the rentals were so mixed up with the business that they were all part of the profits of the refining business, and in some way could be taxed without the levy being a direct tax and without being directly involved in the Pollock case. That, in a general way, without reviewing the reasoning and distinction indulged in, was the net result.

Mr. RAYNER. The Senator is mistaken about that. If he will look at the case, he will find that the court distinctly stated that the rents received and the income derived from the use of the wharves were to be deemed receipts from the business of refining sugar, and, as part of the assets of the company, became taxable. I think the decision is open to criticism. I have sent for the decision.

Mr. HUGHES. I do not wish to get into the habit of criticising the Supreme Court. I suggest that that is hardly good form.

Mr. RAYNER. I think they are decidedly subject to criticism.

Mr. HUGHES. I believe, upon that point, Mr. President, that fair, honest, and well-intentioned criticism of the decisions of that great body, just as the same form of criticism of the work of this body and of any other body of public men, is proper and helpful and ought not to be frowned down or sought to be suppressed. I wish also, in considering these decisions, to get at the real matter decided, and from that ascertain what was really passed upon by the court, and will not judge it by some chance expression or from some word uttered by the way which was not so fully considered as the ultimate result and the intended conclusion with which the court was dealing, and which alone is its decision and binding upon it. Chief Justice Marshall said in a noted case that the court would not be bound, and was not bound, by every expression it used in argument or by every statement of law it made, but only by its direct decision upon some question immediately before it for determination. He advised in that opinion that the bar, the country, and the courts before whom its decisions might be read should not be bound, for the court itself was not, and others ought not to be bound, by language thus used.

But, Mr. President, this draws me off from the matter which I was endeavoring to bring to the attention of the Senate, and that is that in substance, in essence, there is no difference between a law which says that all corporations—I leave out persons, now—shall be subject to an income tax of 2 per cent upon all their incomes derived from all sources, less certain deductions, after having reached $5,000, and another law that says all corporations shall be subject to a special excise tax in respect to the business of being a corporation, to be assessed upon all their income from all sources, less the very same identical deductions up to the same sum. It is the substance of this thing that we go to. In the Pollock case, and again in the Knowlton case, the Supreme Court said, when an argument was made that in certain features the law of 1894 levied an excise tax in character, that they were not to be controlled by names, but would ascertain the substance of the law, and that this substance should determine whether it is in accordance with one contention or the other.

Therefore, when the Senator inquires whether, in my opinion, this law is constitutional, I am confronted with something of a dilemma. Still cherishing the belief, still entertaining the opinion that the income tax of 1894 was constitutional, that we are not forever foreclosed from inquiry into that question before the Supreme Court of the United States, I am compelled to answer that the proposed corporation tax is constitutional; but if, on the other hand, you inquire whether I believe it is free from the objections which led the Supreme Court to hold the income-tax law of 1894 unconstitutional, then I must reply I can not so agree. It is therefore my opinion that unless the Supreme Court shall take the position of holding an income-tax law constitutional—abandons the direct-tax feature of its decision—it can not sustain this amendment; and should we adopt it, we have only abandoned a plain, direct way, to which the adjectives used by the Senator from Maryland are not applicable, for a devious course, which, if it finally reaches the same goal, can be, by its indirection, of no service in securing the result desired.

Mr. RAYNER. Mr. President, will the Senator permit me further? He is very kind in allowing me to interrupt him.

Mr. HUGHES. I have no objection.

Mr. RAYNER. Has the Senator noticed particularly this language in the Spreckels case? I suppose he has. The Spreckels case was decided by Mr. Justice Harlan, who delivered one of the dissenting opinions in the income-tax case, and this reaffirms that portion of the income-tax case. This is what Mr. Justice Harlan, delivering the opinion in the Spreckels case, says of the income-tax case, in which, as I have said, he was one of the dissenting judges:

> For, in the opinion on the rehearing of the income-tax cases, the Chief Justice said:
> "We have considered the act only in respect of the tax on income derived from real estate and from invested personal property, and have not commented on so much of it as bears on gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges, or employments has assumed the guise of an excise tax and been sustained as such."

Mr. HUGHES. I noted that language. It struck me like one of the ancient riddles which led men to go traveling to the temples in the desert, in order to have some goddess or guardian of the fires there reveal the meaning of it.

Mr. RAYNER. But it is a riddle that has been proposed by the justice who delivered one of the dissenting opinions in the Income Tax case, and who was the strongest man on the bench in favor of the constitutionality of that tax.

Mr. HUGHES. Then I submit he should have gone one sentence further, and should have answered the riddle he propounded and which no one else can authoritatively answer.

But I find nothing disturbing in the citation of that expression. It has been one of the admired attributes of the great men who sit upon that bench to gracefully bow to the decisions of the court, even when they are not in accord with their own judgments. They have again and again enforced, even to an extent to which perhaps others might have hesitated to go, the decisions against which they have fought, because they yield their individual opinions, without changing them, to the law as expressed by the court, and then administer that law, but not necessarily accepting it as correct or changing the views which they hold with reference to it. But this statute is not the statute considered in the Spreckels case, and does not contain the element which was construed into a saving difference between it and the act of 1894.

I do not understand that there is anything in the expression quoted by the Senator from Maryland that would make that excise which was before direct or make that direct which was before excise in its nature or that prevents the income tax here presented by the Bailey-Cummins amendment from being an excise tax. In fact, that decision has been most powerfully and persuasively employed in the discussion here to demonstrate that already, and in it the Supreme Court has in effect reversed its position in the Pollock case.

We know something of the history of income taxes generally, and there is nothing in them which would put the proposed tax here revealed outside the pale of income taxes or make it valid when others were invalid or indirect if they are direct. I come back to my proposition, and I ask anyone who considers it, anyone who investigates it, anyone who is seeking only to go to the marrow of this legislation and to know what in fact it is, to point out a single element that is not income, and only income, in its nature, any feature that will eliminate the character of a direct tax, of being a tax upon real estate and invested personal property.

I can take the Bailey-Cummins bill and write into it the words that "this is a special excise tax levied with respect to the business of the corporations, firms, and individuals who are hereby made subject to its terms and provisions," and leave every other word in it exactly what it is to-day, with as much propriety as the similar words are written into this amendment; but would I thereby convert an avowed income tax, if it were not already so, into an indirect or an excise tax?

Is there such potency in mere words that you may change the spots of the legislative leopard by simply calling it a zebra, or some other kind of an animal? I submit that the legislative body of the greatest people on earth, dealing honestly and fairly and frankly with a great subject, can not find in the paltering words of this parenthetical expression anything that changes the nature of this law, anything which would validate it if it is invalid without them.

For these reasons I am of the opinion that this amendment may be constitutional in fact, but submit that just now that constitutionality rests under a slight cloud, owing to a decision of the Supreme Court, which is perhaps but a trifle, perhaps insurmountable, but that is all, in my opinion, that stands in the way.

I believe, Mr. President, that I should be dealing with that great tribunal with more respect for it if I should go to it and frankly say: "The decision rendered by this court, by the casting vote of one hesitating judge, ought to be reviewed by you, and I ask you to do it," than to suggest that I could, by writing a phrase like this into legislation, give them a "short cut across the lot," afford them an opportunity to do by indirection the thing which they would not openly and directly do. That, however, is perhaps a matter of taste and a matter of opinion.

Whether or not I am correct in this analysis of this law, and in claiming that it is an income law, and a direct tax if the Pollock case retains its full vigor, there is no doubt that it taxes incomes derived from real estate and from invested personal property. I can say to the Senate that it is a matter of which a court would take judicial cognizance, a matter of which the Senate is advised, that everywhere throughout the country there are corporations organized for the sole purpose of owning, operating, and collecting the rents from real estate. We have our investment companies everywhere, all of whose holdings are real estate. We have corporations engaged in farming; we have them engaged in owning blocks and renting them; we have them engaged in buying and selling real estate, renting it, having all their income derived absolutely and exclusively from real estate.

One of these corporations is called upon to make its return. It has rented its farm, or it has rented its building, and the return it makes is $10,000 in rents derived from the Colorado Building, let us say, in the city of Washington. It deducts so much for taking care of it and so much for taxes it has paid, and has $8,000 left. On $3,000 of that it pays 2 per cent.

I should like to know where there is any difference between the tax upon that company and the tax which was condemned by the Supreme Court in the Pollock case. There it held the whole law bad because it required the entire income to be considered, and that income might partake—and would if it had it—of the proceeds of real estate in the form of rents, and the proceeds of personal property.

Taking the corporation which owns real estate, I should like to know what difference there is to it under this proposed law, under the Bailey-Cummins law as proposed, and under the law of 1894? The Supreme Court, in the very decision which the learned Senator from Maryland has quoted, says it is the result of the law that determines its character, and not the name which is given to it.

The result is to tax incomes from all sources, including real estate and personal property. That is what this amendment does, and that is what is desired to be done. The fatality of its inherent nature clings to the pen of the draftsman as he writes the words "income," "income," and "income from all sources," which occur and recur throughout the text of the amendment. We are told that it is to be "upon the entire net income"—"upon the entire net income;" and so it runs throughout.

Mr. President, I recognize how different minds approaching the same subject from different standpoints may see it in different lights, and may from similar investigations derive contrary results. But to my mind it is as clear as the sunlight that this is an income tax as much as the law considered in the Pollock case, and imposes direct taxes if that law did. It is equally clear that the words about which inquiries have been made here to-day were put there with the hope that they might take away the curse of being an income tax, of being a direct tax. But that quality is in the bone; it can not be gotten out of it so long as the real purpose and object is to tax incomes.

The ingenuity of the courts, as in the hundreds of years of English and American legislation and decision in conflict with the legislature it has been able to do, will be able to run a winning race with any purpose of the legislature to avoid the prohibitions of the Constitution or the purposes of the court. You can not get around its power and sagacity in that way. You must, and should, meet it open-facedly.

Mr. NEWLANDS. Mr. President——

The PRESIDING OFFICER (Mr. CURTIS in the chair). Does the Senator from Colorado yield to the Senator from Nevada?

Mr. HUGHES. I do.

Mr. NEWLANDS. I wish to ask the Senator from Colorado whether, if he were intent upon framing an internal-revenue tax similar in character to the one covered by this bill, he would not regard it as safer to follow the exact verbiage of the tax which was under consideration in the Spreckels case—which imposed a tax not simply upon corporations, but upon all persons, firms, and corporations engaged in the business of refining oil and sugar, making that tax equal to a certain percentage of the gross receipts above a certain amount—and extend that tax beyond sugar refiners and oil refiners, so as to take in manufacturers, persons, firms, and corporations engaged in transportation, electric lighting, and perhaps in commercial business? I ask him whether he would not regard that as a safer method of procedure than the course proposed by the Finance Committee, and one covering as fully the ground this tax covers?

Mr. HUGHES. Mr. President, I surely should, for it is but a thin plank that you walk when you reach the result of that decision from the statute upon which it was based, and I do not believe it can with safety be trimmed down to the slightest extent. I think that when you begin expanding the supposed exception, the arguments which were made against it will grow in force and strength until there will be some considerable doubt whether the doctrine of stare decisis will support or oppose that decision.

Mr. BRANDEGEE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Connecticut?

Mr. HUGHES. I do.

Mr. BRANDEGEE. Does the Senator from Colorado agree with the Supreme Court in the Spreckels case that the act therein construed was an excise tax?

Mr. HUGHES. I agree that the court so held.

Mr. BRANDEGEE. And how does the Senator distinguish the pending amendment from the act that was construed in that case?

Mr. HUGHES. By the very distinction which that court drew for the purpose of maintaining that tax against the argument made against it, to wit: That it was an occupation tax levied upon the occupation or business of refining oil and of refining sugar. It was the character of the business. It recognized that the occupation was the subject of taxation by the Government; that it might select one occupation and tax it, and leave another occupation untaxed, when it was the occupation itself which it taxed.

That raised a serious question and one that can not be lightly dismissed by anyone who will give it thought, because, when you carry it out to its logical conclusion, you meet the objection urged, that in the end you are taxing the income derived from the business—from the property—and the attention of the court was called to the fact that in the Pollock case it had held that they were taxing real estate, because it was taxing the rents derived from real estate. That question was presented to the court. We may entertain our individual opinions as to with what justice, clearness, and accuracy of judgment the court turned the one way instead of the other, but it based that decision upon a frail and slender distinction, which is left out of this amendment. So that if there be reason to criticise, as the Senator from Maryland has criticised that decision, and if there be but slight ground upon which it may stand, even that slight foundation is taken away in this bill. There the tax was limited to one or two kinds of business. Here the entire business of the country, so far as it is done, we are told, by corporations, is sought to be made the subject of the levy and tax.

By way of illustration, suppose a corporation should be organized for the purpose of receiving gifts—and, singularly enough, such a corporation might be organized—and suppose some one should donate $500,000 to it. It toils not; neither does it spin. It is engaged in no occupation save that of sitting with the cap of mendicancy extended to receive the gifts of the charitable. That is its business. Would that be taxed? Would that be a tax upon a business? Would that be an occupation tax?

If it had been said to all the farmers from Maine to Oregon, "We are going to levy a tax upon all of you who have put your property into corporations"—and there are thousands of them—the protest that would at once arise would not only call for the speedy repeal of the law, but would make its adoption an impossibility. So that was not done. But it is known that

there is a deep-seated and in many respects well-founded prejudice against corporations, until that word has come to be one with which to conjure up ill will and a desire to do such creatures of the law an injury, regardless of those who control them, regardless of their manner of conducting their business, and regardless of the business in which they are engaged. It would seem that it may have been subtly conceived that if this should be called a "corporation tax," that fact, that name, added to the fact that it was called a "special excise tax," would make it constitutional, acceptable, and palatable, and perhaps secure for it favorable consideration. But I believe that, with one exception, no one here has avowed his purpose of voting for it because it is a corporation tax. We have had no expressed purpose of ignoring the injustice which it would perpetrate, thus avowing a purpose of doing an injustice open eyed and apparently for that purpose.

We can not legislate in that way. I know the feeling to which I have referred. I know its extent, and I think I am dealing only fairly with the people when I say it has its limitation. I know full well that those who have used this form of organization until they have gathered together in vast and almost countless millions profits coming through privilege and favored legislation have withdrawn them in such manner from such corporations that they will utterly and entirely escape this tax.

Mr. President, the "Laird of Skibo" will continue forever in his Marathon race with his millions, haunted by the fear that he may die a rich man, without relief by taxation, if this is the only kind of taxation indulged in by the Federal Government. You are not reaching, nor intending to reach, nor has there been a suggestion made here that by this legislation you will reach those whom, we were told, it was the especial desire of our former President to reach; those whom, we were told by President Taft in at least two speeches, it was his desire to have taxed, and those who the Members of this body, of all parties, have so often united in proclaiming should be subjected *to their fair share of* the burdens of taxation. They have escaped hitherto, and they escape now. And yet the Senator from Maryland avowed, in answer to the Senator from Iowa, that it was in the power of this Government to lay an occupation tax upon all persons and firms and corporations in this country, and thereby to include in the tax which would be collected under such law and under the Bailey-Cummins amendment the income which is the proceeds of the untaxed accumulated wealth, not the precarious incomes which we were yesterday told ought to be exempt, but the piled-up and secured and safe and untaxed accumulations in this country which are not invested in corporation stocks, unless in exempted holding companies. These fortunes, these incomes, still escape; they go yet untaxed.

Mr. President, in connection with the justification of this proposed law and the fact that it was intended by its propounder to be one thing and turned out to be another, we were told that a direct tax would be levied by the amendment contained in the proposal which the pending amendment was intended to supplant, and therefore it would necessarily be obnoxious to the Constitution as construed in the Pollock case. In order to sustain that proposition, there was quoted a definition given by some writers on political economy as to what is a direct tax. It is sufficient to reply that the Supreme Court of the United States has said, in several opinions, that this definition is not applicable; that it was not the one in the minds of the framers of the Constitution, and does not control. We need not therefore be apprehensive because of this objection.

These are the legal features of this question. There are included in the taxes to be levied by this proposed law provisions which are in themselves unjust, while the entire amendment also is inherently unjust. They discriminate between those engaged in the same occupation without any reason whatever for that discrimination. It was said—and I referred to this a moment ago—that certain privileges were held by those who engaged in doing business through corporations; and that is, to some extent—now much limited—true. In the State of Colorado three or more persons may incorporate to do any lawful business.

There is no other limitation whatever upon the right to incorporate. By the laws of the State of Colorado also several men may enter into a limited partnership, and those who contribute the chief capital of the limited partnership may restrict their liability so that they will be under no individual obligation whatever. They would escape this taxation, while they are freed from the very same individual liabilities that the shareholders in corporations escape. In addition, in the banks of Colorado, which will be taxable under this law, the shareholders do not have that exemption from personal liability to the extent stated. In addition, corporations there are not perpetual. Their life is generally twenty years, and only twenty years, while as to some few companies fifty years. When they are incorporated they pay for the privilege of incorporation, of being a corporation, for the privilege of doing business as a corporation, a high tax or fee based upon the amount of their capitalization. They pay a flat tax, they pay an annual tax, known sometimes as a "corporation tax." These taxes bring into the state treasury thousands of dollars each year. The corporations pay the State for this state-granted privilege. They pay the State, and they pay a full price for it. But those who do business in the other way do not pay these revenues to the State, nor will they pay under this amendment. Some of them escape, while the stockholders of numbers of corporations taxed under this law incur individual liability. They do the same kind of business, and they are favored in a country where taxes are supposed to be equally and equitably apportioned. That is a feature of undisputed injustice.

There is nothing, therefore, in the suggestion of the propriety of the United States taxing the privilege of being a state corporation. The very thing which avowedly can justify an income tax might be a reason why the corporations should be taxed, but it does not change the constitutional nature of the law which lays its burden upon income under the guise and, as I have said, under the pretense of its being an excise and, in some way, an indirect tax. So that feature of the amendment does not relieve the situation.

I shall not, Mr. President, undertake to discuss now all the many objections inherent in the very nature of this amendment. One of them has been called to my attention by a telegram that I have received, while sitting here to-day, from the city of Grand Junction, in the State of Colorado, where they have what they call a "Home Builders' Association." They are building up homes there, where but a few brief years ago there was an absolute and unmistakable desert which they have reclaimed and made fruitful. They say this tax will put them to a disadvantage as it is framed; that it will lay an unjust burden upon those who are building these homes. No one disputes the force of this claim. Attention was called yesterday to the fact that, while the President recommended that this class of companies or organizations, or the business or occupation, or the income from it, should be exempted from this tax, they were included. That fact was given as a reason why we might doubt to some extent the paternity ascribed to the measure.

Again, it is the custom in the East, and in the West, as I know, sometimes, when the burdens of insurance become intolerable because of the high rates exacted, to form mutual insurance companies. The farmers do it, the fruit raisers do it, the cattle owners do it, the manufacturers do it. They carry thus their own insurance. They incorporate a company for that purpose, and they pay into that company in the beginning of the year what would be equal to the premiums they would be required to pay to a regular insurance company, and at the end of the year they pay the losses and then pay back in the form of dividends to the stockholders of the company the remainder of their original contribution.

Under this amendment you will absolutely lay a tax and collect it upon the money which has been put into this business for the purpose of paying insurance, and has not been used up in that way, and which has already paid its tax.

My attention has been called to the fact that in New England—and, I may say to the Senator from Rhode Island, in his own State—there are corporations by means of which the manufacturing companies pay into a company for insurance $5,000, $10,000, or whatever it may be, which is equivalent to the premiums they would pay for insurance, and at the end of the year the remainder is paid back in dividends. A tax will be levied upon it under this proposed law. My attention was called to the fact that in one year the loss had been in one company $5,000, and that this tax would amount to $2,000.

The measure is full, when studied, of injustices of that character. If it was to be considered here, as all laws should be here considered, it should have been laid before this body at a time when it would have been open to scrutiny, to investigation and amendment, and ought not to have been brought in during the heat of the expiration of the session and then hurried through under whip and spur, and under the command of august power, lest there might be discussion, and that discussion might disclose its weakness, and result in its defeat. These objections are all in addition to the avowed purpose for which this amendment was brought here. I surmised a little while ago such purpose was its object, and with a frankness most commendable, and it would be a happy thing if it was universal, we have been told what the object is, and that object ought to and must condemn it. If no other objection were made to this proposed law than the fact that those who framed it and are urging it were

doing so for the purpose of defeating better legislation, then, so far as I am concerned, in that motive alone I should find an overmastering reason for opposing it and of letting the responsibility for its defeat, for the failure to secure just and popularly demanded tax legislation, rest with those who undertake by contrivances and devices of this character to defeat legislation which might otherwise be and should be successful. Let them take the blame, if blame there may be for the result.

One objection to the Bailey-Cummins amendment offered here was referred to by the Senator from Iowa [Mr. CUMMINS], and that is that the income tax would lay a large burden upon certain enumerated States. My response to that also is that they have the wherewithal to pay that tax. The remainder of the country has paid its tribute for a century into these coffers, coerced, and induced to this contribution by the exactions of an unjust system of revenue, and now when this wealth has been piled up mountain high as a result of this discriminating and unjust revenue legislation, the very fact that it is large is used here as an argument why it should not pay its proportionate part of the taxation of the country. In that argument was revealed much of the real ground of objection to the other law which this is being used to defeat. For that reason again I would decline to give my aid, countenance, or support to a law created for a purpose of that kind. I do not believe that it was the executive purpose that it should be fashioned that way. I do not believe that it was the executive purpose that it should be used for the purpose of exempting certain property and wealth which we now know is by it exempted. It does so beyond controversy, and in that fact I find an answer to all that may be said as to the wishes and the desire of those who would legislate patriotically and equally.

But, Mr. President, another reason has been given for it. We are told it will tend toward centralization; that it will tend toward federal supervision of state corporations; that it will accomplish by indirection that which the Government of the United States has again and again refused to permit to be done by its express sanction, that which in the calm, patriotic judgment of many thoughtful statesmen and profound students of our Constitution it has not the lawful power to do, should not have the lawful power to do, and which if it possessed it would be unwise to use. In the very elements which are urged in its support I find grounds for opposition to it. If this Government has the power, and ought to exercise it, to supervise the affairs and control the business of the small corporations created by the States and thus wipe out and not merely blur state lines and powers, let it be done in that bold, unquestioned, and undoubted manner that becomes a great nation exercising a power which it believes it honestly possesses. Let it not begin by the indirection of an incident under profession of accomplishing another purpose.

But, Mr. President, that is not the only objection to that feature. It is said that it will secure a desired publicity. I say that it will secure the opportunity for a very undesirable publicity, for we are told that the limited inquiries which are made and the limited information which is disclosed shall be kept secret; that it shall be criminal to disclose it, save at the discretion of the President of the United States. It does not give the publicity of law, so far as it permits any whatever. It is the publicity of personal discretion, of personal like or dislike, for which it provides. We will not always have the one President, and I do not believe that man of woman born was ever yet wise enough or good enough to be intrusted with this discretionary power, fraught with the evil that might come out of its exercise. Think of the political power in a desperate campaign this might confer! Think of some disclosures the country has had of contributions where the power of coercion was less! It is only a few months ago that the leak of secrets of the Agricultural Department of the Government enabled the stock jobbers of New York to wreck fortunes and to build up fortunes, and we are not yet through with that inquiry. There should not be gathered in this way information which can not be lawfully made public to all who may legitimately inquire. When you suggest things that can not be disclosed without injury to those who give the information, you are making taxation an instrument of destruction, and are going beyond the legitimate function of enacting a tax law. When it is done for such purpose avowedly, it furnishes a strong reason why the law should not be adopted.

But, Mr. President, there is a further danger in lodging such power as is here proposed and here and in the manner fixed by this amendment. If it is to reveal the financial conditions of state banks and financial institutions and many other institutions that will come into the hands of those who may make merchandise of it to rivals in business, if it may be bruited about to create and bring on disaster, then it is storing up the dangerous means of injury. If it is to enlighten the discretion of the President, is it to be supposed that he is to make himself familiar with all these hundreds of thousands of returns? No; that is impossible. Thousands of eyes, thousands of hands must deal with this information, and somebody must bring out sometime to the President's attention the reasons which they urge as giving ground for making public this or that information or this or that return. I say, again, that such power ought to be lodged in no one man's hand. The knowledge gathered ought to be of a character that it may be revealed without being done at the mere caprice or in the discretionary exercise of power by one man. This element alone instead of securing the desired publicity may prevent it in the future as it has done in the past.

While the Attorney-General may see, in the misconduct of a great corporation, reasons for calling its conduct to the attention of a grand jury, we know that but a few months since another declined to do that very thing. So that action will depend upon the changing mental attitude of those who advise and inform the Chief Executive as to whether matters gathered up at this expense, enormous as it must be, shall be made public or kept secret for all time. Hence this doctrine of publicity, so much commented upon, is not an effective or valuable publicity, and is not put into such form of legislation as accomplishes the only desirable objects which are urged as proper and desirable to be embraced within it.

Again, it is said that trusts are good things. I have heard before somewhere that there are some good trusts. Now, having been told that trusts are good things, we are further told that the law will foster them. It would seem from this that "trust-busting" is shortly to become one of the lost arts, for this legislation, we are told by one who it is suggested whispered charmingly and convincingly into the Executive ear in its behalf has told us that it will favor not merely centralization and that publicity to which I have referred, but that it will also tend to aid the increasing growth of those great trusts, which are again said to be the natural evolution of our civilization and progress.

There is a gentleman who at Chicago made a speech like that, and was then called into high office in this Government and found a reason why he should and a way to explain and retract it. I had supposed that at least until the antitrust clouds had rolled by we would not again hear as a justification for legislation or decision the doctrine of the benevolent and inevitable growth of the trusts as a necessary factor of modern civilization.

Then if this act is to accomplish this result, I am against it for that reason also. I find not one in all the reasons here urged why I should vote for it. I know that he who has stood here most prominently as advocate of this amendment, who helped to rock its cradle, and who told so entertainingly the story of its paternity and its birth, has said that now he would not lessen the strength of the States to exercise all their functions, and that while he would administer in all their vigor the powers of the National Government, that he would not enlarge or increase them. I have further observed that he also said that in his judgment the Supreme Court had erred in the Pollock case and therein went against the weight of the argument.

In that announcement I found ground for rejoicing. He said he preferred the income tax to this amendment, which is what I do, but he also said the President would prefer this unsatisfactory measure to the Bailey-Cummins amendment. This I regretted for many obvious reasons to hear said. But I am glad now that in undertaking to prove constitutional this amendment, it is to be done by reading it, as we were told yesterday, should be done in the light of the lamps of the fathers who framed it and not in the light of that modern incandescent electrical constitutional construction which is to give to the Federal Government all the powers of the States if they are not exercised pretty promptly by the States. That doctrine lately prominent in political discussion seems now to have lost even the support of its authors, and to have passed away with the "big stick."

So we are not to have the constitutionality of this unconstitutional law removed by any new canons of constitutional construction, but we must go back to the old humdrum fashion of studying the letter, and of evoking the spirit of that Constitution and of gathering out of it the meaning of those who made it, uninfluenced by the suggestion that the dead hand of the Constitution should no longer paralyze the legislative progress of the Nation.

Mr. President, for the reasons I have stated and for a hundred others which utter their own voice against this measure, I am opposed to this measure as a substitute, or as a subterfuge, as has been suggested. By "subterfuge" I believe it is meant—

and I am sorry the Senator from Maryland did not give us his etymological learning on this subject—something under which we could flee, under which we could hide, flee under, for escape. Therefore I am opposed to it. I do not know that this may have here now any effect, but I wish it understood that you may call it a "corporation tax" or call it an "excise tax" or call it anything you please, you can not thus, to my mind, take away its real nature or make that good which is otherwise bad, nor can you so interpret the Federal Constitution that an income tax is unconstitutional as direct when you frankly call it an "income tax," but becomes immediately constitutional and indirect when you write upon a yellow label across its face "special excise tax."

Mr. NEWLANDS. Mr. President, following the line of argument which the Senator from Colorado [Mr. HUGHES] has so ably pursued, I wish to speak briefly regarding the practical form that this measure should take, in case it is enacted into law.

I will say by way of preliminary that I hope it will not be adopted as a substitute for the Bailey-Cummins income-tax amendment, but if it is, I hope that it will be put in such shape as to entitle it to the support of the Senators on this side of the Chamber as a legitimate, just, and constitutional tax upon the wealth of the country.

The Senator from Colorado has well said that the plank between the tax under consideration in the Spreckels case and the Constitution was a very thin one, and that it should not be made thinner. What was that tax? It was not a tax upon corporations per se. Its author, Senator White, of California, expressly disclaimed that in the Senate, and he disclaimed it in such a way as to indicate his view, that he doubted the constitutionality of an occupation tax which was applied only to corporations and not to natural persons. That tax was not a franchise tax; it was a tax simply upon occupation—upon the occupation of all persons, firms, and corporations engaged in the business of refining oil or sugar.

So here we have the basis of a law which can be enlarged to sufficient proportions to give us all the revenue that we require without incurring any risk as to its unconstitutionality, a measure resting firmly upon the decision of the court already announced in the Spreckels case. Under that tax, imposed only upon sugar refiners and oil refiners, and equivalent to one-fourth of 1 per cent upon their gross receipts over $250,000 per annum, an annual revenue of $1,000,000 was raised during the Spanish war. Had that tax been three-quarters of 1 per cent per annum upon gross receipts, the revenue raised from those two classes of refiners alone would have been $3,000,000 per annum. Such a tax, extended to all manufacturing and industrial occupations, whether conducted by persons, firms, or corporations, whose annual gross receipts exceed $250,000 per annum, would raise an enormous revenue and would hardly be felt by the vast wealth employed in them.

So Senator White, backed by the Democratic Members of this body, aided by only a few Republicans, placed upon the statute books this constitutional tax upon wealth, which has been sustained by the Supreme Court, and which has been made the basis of the President's recommendation. Why not follow closely its exact verbiage, whilst extending its application to other occupations?

Now, what form of aggregations of capital have come under the just criticism of the country? The great combinations of capital. Has there been any complaint of the small corporations, of the commercial corporations, of the business corporations, of the small manufacturing corporations? There is no complaint regarding them. The complaint is against the great combinations of capital in this country, and the abuses which exist to-day are the abuses which these great combinations of capital have originated and practiced.

Inasmuch as this measure has in view not only revenue, but publicity with a view to ending such abuses, why put the light of publicity upon these numberless small corporations of the country, overburdening the records, and so confusing the inquiry that we may not be able to discern the abuses of the great combinations themselves?

Our legislation, both with reference to revenue and publicity, should be concentrated upon those forms of wealth that have become most oppressive and upon those forms of wealth with reference to which the greatest abuses have existed; those forms of lawless wealth that have brought the law-abiding wealth of the country itself into discredit. There will be no difficulty in raising ample revenue from such sources. Read Moody's Manual and observe the number of corporations of tens of millions and hundreds of millions of dollars that have been organized within the past twenty years; observe their capitalization; observe their income; realize the extent of their operations; and then you can form some judgment as to the amount that can be raised by a reasonable tax upon the gross receipts of persons, firms, and corporations engaged in such varying businesses as Congress may choose to enumerate in this proposed act.

When this matter came up in the House of Representatives, and when it was proposed that the war-revenue taxes should be reduced, the Democratic party then took strong ground against the repeal of this tax on oil and sugar refiners. I myself introduced an amendment there diminishing the tax, but extending it to all manufactures. It obtained the unanimous vote of the Democrats of that body and only failed of passage by 25 or 30 votes. Our contention was that whilst the war-revenue act should be repealed in most of its features, we should retain in the act those forms of taxation upon wealth which would be serviceable hereafter in emergency as a basis of additional revenue for the country. Later on, in 1902, when the bill repealing the war taxes came up, the report of the Ways and Means Committee was against the repeal of this tax. We insisted that it could in time of emergency be so enlarged as to embrace almost all the oppressive forms of wealth and be a source of great revenue to the country. But we were prevented by a special rule from getting a vote on this question.

Mr. President, all these gigantic corporations, being engaged in interstate commerce, legitimately come within the regulating and controlling power of Congress so far as their interstate operations are concerned, and whilst the Senator from Colorado [Mr. HUGHES] may justly contend that it is not within the power of the National Government, and that the National Government should not exercise the power, to bring all these small corporations, organized by and operating within the States, under national supervision; and whilst he doubts the constitutional exercise of such a power, yet certainly he would not apply that view to these great trusts and combinations engaged in interstate commerce, with reference to which we have repeatedly asserted our power to act, and from which it is our duty to secure such data as will facilitate us in our legislation, not only regarding revenue, but regarding trust regulation—the regulation of interstate commerce and the making of tariff schedules. We can easily, by enumerating certain occupations, certain vocations, certain businesses, enlarge the limit of our investigation beyond that of oil and sugar refineries, and embrace all the occupations pursued by these great trusts and combinations in such a way as to bring to Washington all the data which will enable us to act in legislation regarding their regulation and control.

In addition to this, Mr. President, the Congress of the United States has assumed to become the protector of the manufacturing institutions of the country organized under state laws, and has imposed duties upon competing products from other countries which yield a revenue of over $300,000,000 annually to the Government, and which, at the same time, give these manufacturing interests of the country the power of advancing their prices to the purchasing consumers of the country an average of nearly 50 per cent, a total of about $3,000,000,000 annually.

The question comes up repeatedly in Congress, in imposing these duties upon foreign competing products, as to what is the differential between the cost of production here and the cost of production abroad. In connection with tariff legislation, data may be obtained which will enable us to ascertain the profits of these great manufacturing organizations; which will give us facts instead of conjectures, reality instead of imagination. We know that during this entire discussion of nearly four months we have been able to obtain the differential upon hardly a single product.

The machinery of revenue could be used in such a way as to give us the information that will be of value in tariff legislation.

It seems to me that, above all things, this legislation should be concentrated; that it should not embrace all the small, innocent, and innocuous corporations in the country; that it should be applied, as the petroleum and sugar refinery tax was applied, only to organizations having large gross receipts; in that case $250,000 per annum. In this way we shall limit the tax to a comparatively small area; we shall limit the inquiry and the examination to a comparatively small area, and at the same time we shall be enabled to ascertain the facts in connection with these great manufacturing interests and make them public in such a way that the publicity itself will be a corrective and the facts which we obtain will be of service to us in the legislation upon which we propose to act.

Mr. President, I shall not enter into the constitutional questions which the Senator from Colorado has pursued. Some days ago, at the very opening of this debate, I presented an historical statement regarding the tax upon oil and sugar

refiners, simply making a statement in connection with it that would tie that history together.

Without much inquiry into the law, I then stated that grave danger existed as to the constitutionality of the tax imposed by this amendment; that if it should be regarded as a tax upon occupations, then the question would be raised that it was not a uniform tax; that to tax an occupation in the hands of an artificial person and not to tax it in the hands of a natural person might be regarded as a denial of that uniformity called for by the Constitution; that if it should be regarded as a tax upon the privilege of being a corporation, the power to be and the power to do, the question might be raised as to our constitutional power to tax such a franchise, the creation of a sovereign State acting within its jurisdiction.

It is true that the Supreme Court has declared that that uniformity need be only a geographical uniformity; but the question of classification is always a question upon which hair-splitting decisions can be made.

So with reference to the tax viewed as a corporation tax, it has seemed to me that it is a tax upon the right to be and the right to do of a corporation; and whilst it is contended that such a tax has been upheld, notably in the Adams Express Company case, yet I am unable to see that that decision covers entirely this contention. It seems to me to involve a contradiction to declare that when the Nation, acting within the granted powers, grants a franchise to a corporation, no State can impose a tax upon such franchise, for the power to tax involves the power to destroy; and yet, at the same time, to declare that when the State grants a franchise to a corporation the Nation can, if it so chooses, tax it out of existence. These rights and powers, it seems to me, must be reciprocal. The Nation is supreme within the powers granted by the Constitution over every inch of American territory; the State is supreme within its reserved powers over every inch of territory within its boundaries. The one is just as sovereign as the other within its own acknowledged jurisdiction; and to say that the power and the privilege granted by some one sovereign, the Nation, can not be taxed by the State, and that the power and privilege granted by another sovereign, the State, can be taxed by the Nation, seems to me to involve a contradiction.

So I contend that we should not throw this important matter of revenue into the maelstrom of litigation; that this plank, upon which it is proposed that this particular measure shall rest, is too thin for further splitting. The President has declared that his recommendation is based upon the decision in the Spreckels Sugar Company case; and it is the part of wisdom to purpose closely the lines of the tax that was imposed in that case. If we do that, we shall avoid the inconvenience of taxing all the small corporations of the country, and we shall confine our taxation to these great combinations of capital whose profits have been enormous, whose ability to bear is greater than that of any other class of the community, and whose abuses have awakened the attention of the country and demand legislative cure. The substitution of the corporation tax for the income tax seems to be a foregone conclusion, so far as present action is concerned; but I shall hope that when the bill as amended is before the Senate such amendments will be made as will free the small corporations from its operation, will place the combined wealth of the big manufacturers and corporations under national burdens, will furnish the statistical information necessary to rectify trust and tariff abuses, and, above all, such amendments will make the tax imposed identical with that which has already so successfully stood the test of the courts.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Rhode Island [Mr. ALDRICH] to the amendment of the Senator from Massachusetts [Mr. LODGE].

Mr. ALDRICH. Mr. President, I am not sure whether or not there are other speeches that are to be made upon this proposition. I think there are some Senators, perhaps, who are not here who would like to make some short remarks upon either one amendment or the other; and, for the convenience of all Senators, I would suggest that we take a final vote upon the amendments, without further debate, at 1 o'clock to-morrow.

Mr. ELKINS. Why can we not vote now?

Mr. ALDRICH. I am not sure that all Senators who desire to speak have done so. I thought perhaps we might agree to vote to-morrow.

Mr. ELKINS. We came near having a vote yesterday.

Mr. ALDRICH. I am willing, of course, to vote now if there is to be no further discussion.

Mr. ELKINS. I have been waiting here all day to vote.

Mr. BAILEY. I am afraid the Senator from West Virginia would leave if we would let him vote. [Laughter.]

The VICE-PRESIDENT. Is there objection to the request of the Senator from Rhode Island?

Mr. STONE. What is the request of the Senator?

Mr. ALDRICH. That a vote be taken on the proposition of the Senator from Texas [Mr. BAILEY], the pending amendment, the substitute, and any amendments which may be offered to them, without further discussion, to-morrow at 1 o'clock.

The VICE-PRESIDENT. Is there objection to the request?

Mr. BACON. I should like to ask the Senator a question before the matter is determined.

Mr. ALDRICH. Several Senators ask me, "Why not vote now?" I am not sure whether the discussion has been exhausted.

Mr. BAILEY. I know two Senators are in conference now as to whether or not both will speak. One of them will certainly make a brief speech, and consequently we can not vote right now. I prefer that an hour be definitely fixed, so that every Senator can be advised of that hour and be certain to be here, without any inconvenience or any mishap.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Rhode Island?

Mr. BACON. I desire to ask the Senator from Rhode Island a question before the matter is concluded. There has been some difference of opinion in his absence as to the parliamentary situation in case his amendment should be adopted. There are, as the Senator knows, several amendments, either of which it will be difficult to perfect unless there is a liberal construction of the rule as heretofore executed by permitting amendments without regard to strict parliamentary law. For instance, the Senator's amendment is pending, and if it is in the second degree as an amendment—about which there is some little difference of opinion—and it should be adopted, would the Senator then recognize the right of Senators to offer further amendments to his proposition?

Mr. ALDRICH. Of course I am inclined to be liberal about the matter, but I prefer to have an understanding that any minor amendments to perfect the text should be considered before the time fixed for the final vote. There are some amendments, one offered by the Senator from Nebraska [Mr. BURKETT], and other amendments of that kind. I will say to Senators that my impression is that it would be better for the Senate to adopt the amendment as it stands. The committee will then consider its effect; and before the bill finally passes they will perhaps have some amendments to suggest with reference to fraternal and benevolent organizations. My own opinion is that benevolent organizations are all now exempted by the terms of the amendment as it stands. Of course none of us want to tax that class of corporations, and if the amendment should be adopted as it stands, the committee will give very careful consideration to all these propositions for exemption. I do not think it is possible for the Senate in the short time we have to consider them carefully at this moment; and I should be inclined myself, if we are going to have a vote now, to move to lay amendments of that character upon the table, with a view to trying at a later time to perfect some amendments which would carry out the plain intention of the proposed law.

Mr. CUMMINS. Mr. President, I should like to ask a question of the Senator from Rhode Island.

The VICE-PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Iowa?

Mr. ALDRICH. Certainly.

Mr. CUMMINS. I understand the Senator's request would, if granted, preclude debate upon any amendment that may be offered?

Mr. ALDRICH. Yes; but we would have plenty of time between now and the time I have suggested for discussing any amendment, if Senators saw fit to do so.

Mr. CUMMINS. I am unwilling to consent to that request. I am perfectly willing to vote on the amendment as it is offered and as it appears now, or I am perfectly willing to fix a time when it may be voted upon; but I am unwilling to consent to an arrangement by which other amendments may be offered and voted upon without debate. I myself want to reserve the opportunity to be heard upon any amendment that may be offered to the proposition of the Senator from Rhode Island.

Mr. ALDRICH. The Senator from Iowa would have all of his rights in the Senate; that is, any rights which he wanted to reserve in that direction. It seems to me that the debate upon this proposition must terminate at some time; and of course if Senators are not willing to make an agreement, there is nothing left but to go on and dispose of the matter as rapidly as we may.

Mr. CUMMINS. I am perfectly willing that we shall terminate it now; I am perfectly willing to fix a time to-morrow to vote on the pending amendment; but it is not, according to my view, fair to present amendments that have not been considered and have not been discussed, and to require a vote upon them without consideration.

Mr. ALDRICH. Mr. President, I am bound to say, for the committee, that they will adhere as closely as possible to the text of the amendment as it now stands for various reasons, which must be apparent to every Member of the Senate. With the exception of an exemption which might include benevolent organizations—which I think are clearly covered by the text as it now stands—I do not think, so far as the committee are concerned, that they will be willing at any time—of course subject to the will of the Senate—to submit to any amendment. Therefore, I think that the suggestions of the Senator from Iowa are not especially valuable, looking at them from that standpoint.

Mr. CUMMINS. It is quite likely they are not valuable.

Mr. ALDRICH. I meant in so far as accomplishing anything was concerned in connection with this matter at the present time.

Mr. CUMMINS. I have not been able to make any suggestions that have been very valuable; but, nevertheless, I do not want to vote upon amendments that are offered without a chance to know what those amendments are, and how they affect the pending measure. We are dealing with rather an intricate and difficult subject. I do not wonder at the hesitation of the Senator from Rhode Island in changing the text of the proposition. I am sure that he must recognize that we ought not to vote blindly on amendments that hereafter may be offered.

Mr. ALDRICH. The proposition as it now stands has not been presented to the Senate without the most careful consideration.

Mr. CUMMINS. I understand that.

Mr. ALDRICH. And I will say to the Senator, very frankly, that unless the opponents of this proposition obtain control of it and vote down the friends of the measure, there will be no substantial change in the proposition as it now stands.

Mr. STONE. We could not hear what the Senator from Rhode Island said.

Mr. ALDRICH. I said that, unless the committee loses control of the amendment and are voted down, there will be no substantial amendment to the proposition as it now stands. The committee will certainly consider carefully the matter of exemptions.

Mr. CUMMINS. Why, then, should not the Senator from Rhode Island avail himself of the opportunity in the Senate, if he desires or shall desire, to make any amendment in the measure?

Mr. ALDRICH. That is my proposition, that we vote this amendment into the bill, and then, if there is any change that the committee think it desirable to make in the Senate, they will have a chance to offer amendments, and the Senator from Iowa will have a chance to offer his.

Mr. CUMMINS. Why not vote on the measure as it is, reserving to Members of the Senate generally their right to offer amendments when it passes from the committee?

Mr. ALDRICH. But that reservation will not be necessary.

Mr. CUMMINS. I know it will not be necessary.

Mr. ALDRICH. I am quite willing myself to vote at this moment, without any further discussion on this amendment. I think there can be no objection to that.

Mr. BACON. On what amendment?

Mr. ALDRICH. On the committee amendment.

Mr. BACON. I desire to ask the Senator a question.

Mr. BULKELEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Connecticut?

Mr. ALDRICH. The Senator from Georgia [Mr. BACON] desires to ask me a question.

Mr. BACON. I think I have the floor, and I yielded it to the Senator.

The VICE-PRESIDENT Possibly the Senator from Georgia is correct. He now has the floor, at any rate.

Mr. BACON. I wish to ask the Senator a question. I do not think anything should be done which shall deprive Senators of the right to offer such amendments to this important proposition as they may wish to offer. I will say to the Senator from Rhode Island that during his absence I had a conference with the Senator from Massachusetts [Mr. LODGE] as to what would be the recognized procedure in the offering of amendments. The Senator from Massachusetts was of the opinion that under the liberal practice we have heretofore pursued in other cases of bills of importance, after the adoption of an amendment or a substitute, amendments may be offered. Of course that is not strict parliamentary law, but it has been the usual procedure of the Senate.

Mr. LODGE. In other words, if the Senator will allow me, after the adoption of the amendment of the Senator from Rhode Island, my amendment as amended will then, of course, be open to amendment as a substitute.

Mr. BACON. That is what I refer to. Of course when the substitute offered by the Senator from Massachusetts is amended, if it shall be, it will become his substitute. The opinion of the Senator from Massachusetts was that amendments would then be in order to that amended proposition. If that is done, of course it will be in accordance with the liberal practice which we have pursued; and it will avoid a great many technicalities in the strictly scientific parliamentary procedure. If that is done, I am content; but if that is not done, then I want an opportunity to offer amendments before the amendment of the Senator from Rhode Island is adopted.

Mr. ALDRICH. Mr. President, I will say that, as the Senator is well aware, under strict parliamentary usage, and under the usage of the Senate, if my amendment to the amendment of the Senator from Massachusetts should be adopted, that amendment could not be again acted upon or amended in Committee of the Whole.

Mr. BACON. I understand that.

Mr. ALDRICH. That is the parliamentary law.

Mr. BACON. But if the Senator stands on strict parliamentary usage, I will say to him that, in my opinion, his amendment is now amendable, because his is the first amendment to the substitute, and there is——

Mr. ALDRICH. I will say to the Senator from Georgia that I shall not be able to agree with him as to that.

Mr. BACON. If the Senator will pardon me a moment, either that is the case or the amendment is already in the third degree, for this reason. I hope the Senator will give me his attention, so that I may see whether I make the point correctly or not. It is either an amendment in the first degree to a substitute, in which case another amendment would be in order as being in the second degree; or else, if the substitute offered by the Senator from Massachusetts is itself an amendment to the amendment offered by the Senator from Texas, it is already in the second degree, and the amendment of the Senator from Rhode Island would now be in the third degree and not in order. The Senator may take either horn of the dilemma he chooses.

Mr. ALDRICH. Mr. President, the parliamentary situation is this: The Senator from Texas offered a proposition——

Mr. BACON. Yes; as an amendment.

Mr. ALDRICH. As an amendment to the bill.

Mr. BACON. Yes.

Mr. ALDRICH. The Senator from Massachusetts then offered an amendment in the nature of a substitute.

Mr. BACON. Yes.

Mr. ALDRICH. I then offered an amendment to the substitute.

Mr. BACON. Yes.

Mr. ALDRICH. The ordinary parliamentary rule, and the rule of the Senate require that substitutes for the original proposition may be amended with a view of perfecting them before the vote is finally taken upon the substitution.

Mr. BACON. That is true; but, if so——

Mr. ALDRICH. And the amendment of the Senator from Massachusetts is clearly a substitute. I have offered an amendment to the substitute. Pending that amendment, no other amendment is in order.

Mr. BACON. I beg the Senator's pardon.

Mr. LODGE. Then, if the Senator will allow me——

Mr. ALDRICH. I do not see how it would be possible to offer any other amendment. It would, of course, be an amendment in the third degree.

Mr. LODGE. I do not think it is worth while to argue that point. My own judgment is that it is not amendable now. But after the amendment of the Senator from Rhode Island is either rejected or accepted, further perfecting amendments can be offered to the substitute which will then be pending for the amendment of the Senator from Texas.

Mr. ALDRICH. I will say to the Senator from Georgia, that I myself am quite willing to have an understanding that any amendment may be offered which does not change the nature of the proposition.

Mr. BACON. But no one would offer an amendment unless it were intended to effect some change.

Mr. ALDRICH. I refer to one which effects a fundamental change.

Mr. BACON. Of course the nature of the amendment can not be stipulated. We want the right to offer our amendments.

Mr. ALDRICH. Then, Mr. President, I think we may as well go on. It is very evident that we are not going to arrive at a conclusion, and we may as well go on and get a vote whenever we can. I have made a certain proposition. If it is objected to——

The VICE-PRESIDENT. No objection has yet been offered.

Mr. BACON. I shall certainly object unless the Senator assures me that we shall have a clear road to amend, as we think we are entitled to do.

Mr. ALDRICH. No; the Senator will have no clear road that is contrary to the rules and the observances of the Senate.

Mr. BACON. I can not hear what the Senator says.

Mr. ALDRICH. I say I can not see how it is possible to have a clear road that is in violation of the rules of the Senate or the usual custom.

Mr. BACON. I still can not hear what the Senator says. I can hear enough of what he says to indicate that it is important that I should hear it. What does the Senator say?

Mr. ALDRICH. I say it is impossible to have an agreement which violates the rules of the Senate or the practices of the Senate.

Mr. BACON. I think that is exactly what the Senator from Rhode Island is seeking to get.

Mr. ALDRICH. I think not.

Mr. BACON. That is the nature of his proposition.

Mr. BURKETT. Will the Senator yield to me?

Mr. BACON. I am certainly not endeavoring to do anything of the kind. I am trying to prevent its being done.

Mr. McLAURIN. Mr. President——

The VICE-PRESIDENT. The Senator from Georgia [Mr. BACON] still has the floor. Does the Senator yield the floor? And if so, to whom?

Mr. BACON. I yield to the Senator from Mississippi.

Mr. McLAURIN. As I understand, the Senator from Rhode Island means, by "voting without further debate," to vote without further debate after 1 o'clock to-morrow; not to vote without further debate between now and 1 o'clock to-morrow?

Mr. ALDRICH. Oh, no.

Mr. McLAURIN. I wish to say this about the amendment of the Senator from Rhode Island: His amendment is either in the first or in the third degree.

Mr. BACON. It is one or the other.

Mr. McLAURIN. If it is in the first degree, it is amendable. If it is in the third degree, it is out of order.

Mr. BACON. That is true.

Mr. McLAURIN. As the Senator from Massachusetts says, if his substitute is amended by the amendment offered by the Senator from Rhode Island, then the substitute is amendable.

Mr. LODGE. Certainly; but not——

Mr. McLAURIN. But I do not believe that part of it which is the amendment of the Senator from Rhode Island is amendable.

Mr. LODGE. Certainly not. That is an adopted amendment.

Mr. McLAURIN. That is what I say.

Mr. LODGE. That portion of it is not amendable.

Mr. McLAURIN. It is not amendable. But I do think it is amendable now, if the Senate so desires, because the proposition of the Senator from Massachusetts to substitute his amendment for that of the Senator from Texas is either first or second. If it is first, the amendment of the Senator from Rhode Island can be amended. If it is second, the amendment of the Senator from Rhode Island is not in order, because it is in the third degree.

Mr. ALDRICH. Mr. President, if the Senator from Mississippi will pardon me, the situation is perfectly clear. The amendment offered by the Senator from Massachusetts is an amendment in the nature of a substitute, to which substitute I have offered an amendment; and pending the amendment no further amendment to the substitute is in order. If the amendment should be adopted, the substitute would then undoubtedly be still open for amendment for the purpose of perfecting it before the vote is taken on the final substitution.

That is the parliamentary situation. It is as clear to me as that twice two is four.

Mr. McLAURIN. It is very clear to me, too; but it is very clear to me that exactly the reverse of what the Senator from Rhode Island has expressed is the case.

Mr. President, I hope no objection will be made to taking a vote to-morrow at 1 o'clock. I do not see how we can be disadvantaged. It does not make any difference whether the view entertained by the Senator from Georgia prevails, or that entertained by the Senator from Rhode Island, as to the amendability of the amendment of the Senator from Rhode Island. I can not see how anybody can be disadvantaged by it.

Mr. ALDRICH. I do not think so, either.

Mr. McLAURIN. I say that for the reason that at 1 o'clock to-morrow, if anyone desires to offer an amendment to the amendment offered by the Senator from Rhode Island, it can be done; and then the question whether or not it is in order can be tested. The Chair can rule on it, or can submit it to the Senate to know what the judgment of the Senate is as to whether or not it is in order.

Mr. ALDRICH. The situation then will not be changed from what it is now.

Mr. McLAURIN. I do not think it will, and I do not think any advantage will be gained by objecting; because the fixing of an hour for the vote will obviate the necessity of having some Senators remain here who are really not in a condition of health to remain here all the time. I therefore hope that hour will be agreed upon.

Mr. LODGE. Mr. President, I hope it will be possible to agree to the hour of 1 o'clock to-morrow; but I merely wish to say this, which I think everybody knows, but which it is perhaps worth while to emphasize: After this matter gets into the Senate, the entire proposition will, of course, be open to amendment in the Senate, like the whole bill; and no one can be deprived of any ultimate right of amendment that he will have however this particular parliamentary question may be decided. It will have to be decided now, or at any time that it may be raised; but no right will be lost by doing this.

Mr. BULKELEY. Mr. President, the Senator from Rhode Island made the statement that the view of the committee was that beneficial associations were to be relieved in some practical way, by an amendment, from the provisions of this measure. I should like to ask him what those beneficial associations include. Is it intended to include mutual life insurance companies?

Mr. ALDRICH. I think not, Mr. President. That was not my intention. I think beneficial organizations are included in the terms of the amendment as it now stands. The committee will consider all possible exemptions in such time as they have, with a view to trying to arrive at a conclusion that will be satisfactory to Senators in general.

Mr. BULKELEY. At some time, Mr. President, I should like to offer an amendment which shall embrace and cover the interests of more than 5,000,000 of the voting population of this country.

Mr. ALDRICH. The Senator will have an opportunity to do so.

Mr. BULKELEY. I refer to the persons insured in mutual life insurance companies.

Mr. ALDRICH. The Senator will surely have an opportunity in the Senate to do that.

Mr. BULKELEY. But I do not want to be met in the Senate with a motion to lay on the table an amendment of that character.

Mr. ALDRICH. I shall not be able to make any promises as to that at this moment.

Mr. BULKELEY. I want to try to protect myself in advance, if I can, so that that question, which seems to me to be of very great importance, can be properly presented.

Mr. ALDRICH. There is no way in which I could, if I wished to do so, preclude the Senator from Connecticut from offering that amendment; and I certainly have no such disposition.

Mr. BULKELEY. I understand that; but it is very easy for the chairman of this committee, as he has sometimes had occasion to do when I entirely agreed with him, to lay such a motion on the table. He has seemed to have such power behind him that I have joined in with him to do it. But what I desire is this: I am ready to vote, because I am opposed to substituting this tax for the income tax, and I am opposed to the income tax, and I am opposed to any form of taxation other than that provided in the tariff bill at the present time. I believe it would be a much wiser course for this body to drop the whole matter, for a time at least, and let it go over until we meet again, in a few months. Let us see what becomes of the work we have done, whether or not it is of sufficient value in raising revenue for the Government, and then, if necessary, determine upon some additional form of taxation with which the people of the country are satisfied.

Mr. MONEY. Mr. President, I rise to a point of order.

The VICE-PRESIDENT. The Senator will state it.

Mr. MONEY. I desire to know what the regular order is.

The VICE-PRESIDENT. The regular order is a vote on the pending question. But pending that, the Senator from Rhode

Island [Mr. ALDRICH] has submitted a request for unanimous consent, which the Chair has once put, and which the Chair will again put, and see if there is any objection thereto.

The Chair assumes that the request of the Senator from Rhode Island is understood. Is there objection to the request?

Mr. CUMMINS. Mr. President, I desire to more fully understand the situation before I acquiesce in the request. I remember that immediately after the amendment offered by the Senator from Texas [Mr. BAILEY] was brought before the Senate the Senator from Massachusetts [Mr. LODGE] offered a substitute, and very promptly thereafter the Senator from Rhode Island [Mr. ALDRICH] offered an amendment to that substitute. I was told that that was a bit of parliamentary strategy, adopted for the purpose of preventing any amendment being offered to the amendment presented by the Senator from Rhode Island. I had not at the time much sympathy with that way of doing business, but there was no other course available save to submit to it.

We have argued the amendment upon that hypothesis. If I am correct about it, if that is the parliamentary situation, and if at the appointed hour to-morrow we shall be called upon to vote upon the amendment offered by the Senator from Rhode Island, I have no objection to fixing that as the hour for the vote. But if, a moment before the hour arrives, it is within the power of the Senator from Rhode Island or any other Senator to offer an amendment to the amendment now pending, I am not willing to be called upon to vote upon that amendment without the opportunity of discussing it.

I therefore rise to ask this parliamentary question: If we consent in the manner suggested by the Senator from Rhode Island, will any amendment to the amendment be received and held to be in order?

The VICE-PRESIDENT. The Chair thinks the amendment of the Senator from Rhode Island to the amendment of the Senator from Massachusetts must first be voted on. Thereafter amendments in order could be offered, but not until then.

Mr. CUMMINS. With that understanding, Mr. President, I have no hesitation whatever in acquiescing.

The VICE-PRESIDENT. Is there objection?

Mr. BACON. Mr. President, I understand the request for unanimous consent of the Senator from Rhode Island is that we shall then vote on all amendments pending or to be offered?

Mr. ALDRICH. That is correct.

Mr. BACON. In other words, we are permitted to offer them as long as it is in order for us to do so?

Mr. ALDRICH. Without debate.

Mr. SHIVELY. But is it meant that if a Senator offers an amendment containing new matter, he would have no right to explain the amendment?

The VICE-PRESIDENT. Not after 1 o'clock.

Mr. ALDRICH. Not after 1 o'clock.

Mr. SHIVELY. I can conceive of an amendment that might be offered after 1 o'clock that would suggest another amendment on entirely new matter, and yet there would be no opportunity for an explanation before the vote.

Mr. ALDRICH. Mr. President, of course, so far as the committee are concerned, they have no intention of offering any amendments to the proposition before them. They propose to stand, at the present moment at least, upon the proposition as it is. I will say, in fairness to all Senators, that we have no purpose of offering any amendment changing the nature of the position at all.

Mr. MONEY. Mr. President, will the Senator permit me to make a suggestion to him?

Mr. ALDRICH. Certainly.

Mr. MONEY. There seems to be a difficulty in the minds of some Senators over the possibility that a proposition may be offered that will be new to them, at least in some degree, that has not been covered by the debate, and about which they may desire to express some opinions. I should like to suggest to the Senator from Rhode Island that he fix the hour for the vote to-morrow evening at 4 o'clock.

Mr. ALDRICH. Oh, no!

Mr. MONEY. Let us have to-morrow for debate.

Several SENATORS. No! No!

Mr. MONEY. Of course, Mr. President, amid such a shower of "noes," I shall not go any further; but I did want to adjust this difficulty if I could.

Mr. ALDRICH. If the Senator will permit me——

Mr. MONEY. I am heartily with the Senator in his request; but it seems that other Senators do not share my views. But as they do desire further time for debate, why not, simply as a compromise, accept that suggestion?

Mr. ALDRICH. There are a number of hours between now and 1 o'clock. We have three hours to-morrow and two hours left of to-day's session, if Senators wish to occupy them.

Mr. MONEY. I do not want a single moment of the time myself, Mr. President.

Mr. ALDRICH. That is five hours, in which, I think, any Senator can without difficulty explain any amendment he desires to offer. If a Senator having such an amendment can not make the Senate understand it in five hours, he probably could not make it understand it at all.

Mr. MONEY. Mr. President, I had not quite concluded. I will state that I rose simply to try to facilitate matters. But as no one on either side seems disposed to take any suggestions, I am willing to let matters take their own course.

Mr. SCOTT. Mr. President, I should like to ask the chairman of the Finance Committee why we can not have a vote now? There are about 80 Senators here who have been here since the 15th of March, and have said very little. The other 12 have done the most of the talking. I think we have thrashed this thing out so that if we are at all capable of comprehending it, we understand it now as well as we ever shall. And I hope that, in view of the hot weather, with all of us sweltering here, the Senate will vote now, without postponing the matter until to-morrow.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Rhode Island?

Mr. NEWLANDS. Mr. President, I suggest that we take a vote on this amendment to-morrow at 1 o'clock. Then, after the amendment is voted on, I suggest that we proceed to perfect it, leaving the matter open for amendment and for debate upon the amendment. I think that was the understanding we arrived at yesterday.

Mr. CULLOM. Let us close the debate at 1 o'clock to-morrow.

Mr. CUMMINS. That is precisely what I have indicated or attempted to indicate. If, after this amendment is adopted, some one shall offer an amendment to it that entirely changes its scope and either makes it better or worse, I for one am not willing to vote without the opportunity of debate.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Rhode Island?

Mr. BURKETT. I have an amendment that I am very anxious to offer to the proposed amendment of the Senator from Rhode Island. I think before we vote on the amendment of the Senator from Rhode Island we ought to perfect it. But from what the Senator from Rhode Island has said I understand the parliamentary situation to be that after his amendment is voted on I can offer my amendment. But his reply to the Senator from Nevada [Mr. NEWLANDS]——

Mr. ALDRICH. Do I understand that my proposition is objected to, Mr. President?

The VICE-PRESIDENT. No objection has yet been made.

Mr. CUMMINS. There is an objection to the proposition——

Several SENATORS. Let us have the regular order.

The VICE-PRESIDENT. Is there objection to the request?

Mr. NEWLANDS. I object.

Mr. CUMMINS. I object to it, if I understand that all amendments——

The VICE-PRESIDENT. The Senator from Iowa objects.

Mr. LODGE. Let us have the regular order.

The VICE-PRESIDENT. The regular order is the disposal of the amendment of the Senator from Rhode Island [Mr. ALDRICH] to the substitute of the Senator from Massachusetts [Mr. LODGE] for the amendment of the Senator from Texas [Mr. BAILEY].

Mr. ALDRICH. And upon that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BULKELEY. Mr. President, I have no desire to delay the vote. I simply desire to have some matter inserted in the RECORD.

Mr. BACON. Mr. President, before the vote is taken, I have an amendment which I desire to offer at the present time. It may not be reached to-night, but I desire to have it printed, and I ask that it may be read. I shall offer it at the proper time.

The VICE-PRESIDENT. The Secretary will state the amendment proposed by the Senator from Georgia.

The SECRETARY. At the end of the amendment it is proposed to insert as the ninth paragraph the following:

That every corporation, joint-stock company, and association, and every person in the United States holding the bonds, debentures, or other evidences of indebtedness of any corporation or association organized under the laws of either the United States or of any State or Territory of the United States, shall, upon the right to hold and possess said bonds and to collect the principal and interest of said bonds, be subject to pay annually a special excise tax equivalent to 2 per cent upon the annual interest payable upon said bonds.

That every corporation, joint-stock company, and association having outstanding bonds upon which interest is payable annually, semiannually, or quarterly, or at less intervals of time, shall, on the 1st day of October of each year, make out and transmit to the collector of internal revenue for the district in which said corporation, company, or association shall be situated a report of the said outstanding bonds, the denominations of said bonds, the aggregate amount of the same,

the rate of interest payable on the same, and the dates when said interest is due and payable; which report shall be transmitted forthwith by the collector to the Commissioner of Internal Revenue. It shall further be the duty of every such corporation, company, and association, when such interest becomes due and payable, to deduct and retain from the proportion of said amount payable to each of the holders of said bonds the amount of excise tax payable by said bondholder under the provisions of this section, and to thereafter pay the same to the said collector of internal revenue under the rules and regulations which shall be prescribed by the Commissioner of Internal Revenue; and the receipt of the said collector of internal revenue for the said amounts thus paid to him by said corporation, company, or association shall be received by said bondholder to the extent named therein in payment of the amount due upon the bond or bonds so held by him.

Mr. BACON. Mr. President, before the vote is taken on the amendment offered by the Senator from Rhode Island, there is an amendment which I desire to offer and upon which I certainly ought to have the opportunity to have a vote at some time. The amendment which I desire to offer is striking out the enumeration in the second paragraph of the items which shall be deducted in ascertaining the amount upon which the tax is to be assessed. The words are these:

Fifth, all amounts received by it within the year as dividends upon stock of other corporations, joint-stock companies or associations, and insurance companies, subject to the tax hereby imposed.

That is, in the enumeration of certain deductions which shall be made from the income of a corporation before the assessment of 2 per cent shall be made. I desire simply to say to the Chair——

Mr. CLAPP. Mr. President, will the Senator pardon me for just a moment there?

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Minnesota?

Mr. BACON. Certainly.

Mr. CLAPP. To make that complete, ought not the Senator to strike out also the words on page 2, beginning with line 3, as follows:

Exclusive of amounts received by it as dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax hereby imposed.

Mr. BACON. I suppose, Mr. President, if the amendment which I have offered were adopted, the language to which the Senator refers would necessarily be modified.

Mr. CLAPP. Also, on page 2, line 11, referring to corporations organized outside of the United States, should not there be stricken out the words:

Exclusive of amounts so received by it as dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax hereby imposed.

Mr. BACON. The suggestion of the Senator from Minnesota is a very proper one. The provisions to which he refers all relate to the same matter. The only point I am after is this: I do not care when we have an opportunity to make it, but we certainly have the right to amend this proposition, or attempt to amend it, in such way as to perfect it according to our views, if we have the votes to do so; in other words, we can not be cut off from action on this amendment by a parliamentary procedure.

As my opinion is that we have a right to now have the amendment acted upon, I will state in a few words to the Chair upon what ground I base that opinion. The Senator from Rhode Island is correct in the suggestion that when a substantive substitute, one which embraces an entire proposition, is presented, it being a complete proposition in itself, there should be opportunity to perfect it independently of the rule of amendment, which relates to the prior proposition.

In other words, the original proposition should be perfected as an independent proposition by the offering of amendments and the action upon them; and in the same way the substitute should be perfected; and then, when each has been perfected, the parliamentary body has the opportunity to choose between the two. It is manifestly impracticable under the ordinary rule of amendment to take up an original proposition, then treat a substitute as if it were a first amendment, and then proceed in that way.

We had this matter before the Senate several times during the incumbency of your predecessor, Mr. President, and the matter was very fully argued. I think I do not transgress the proprieties by stating that the former Vice-President agreed with the proposition that was thus presented, and only awaited an opportunity to make the ruling. He had gone so far as to write it out, and stated to me the fact that he would be glad for an opportunity to arise in order that he might make the ruling. It was to the effect that each proposition must be dealt with separately, and each dealt with as if it were an independent proposition; and when it is dealt with, I repeat, each being perfected, the body is in a position to choose between the two.

The point I desire to make to the Chair is this: Assuming that as the correct procedure, which it undoubtedly is, every incident relating——

Mr. ALDRICH. Mr. President——

Mr. BACON. If the Senator will pardon me until I finish the sentence——

Mr. ALDRICH. I suggest that there is no use in discussing a question now that may come up hereafter.

Mr. BACON. It is coming up now.

Mr. ALDRICH. The Senate has been waiting for the arrival of a Senator who was sick, in order to vote, and I ask the Senator to defer his hypothetical suggestion until after the vote is taken.

Mr. BACON. I think now is the proper time, but if the Senator will consent to my offering it afterwards, I am content.

Mr. ALDRICH. I do not know what the proposition of the Senator is. I have not been able to hear him. Of course the rules of the Senate, I take it, will be enforced as to any amendment that may be offered.

Mr. BACON. Very well, then. That being the case, I will have to ask the ruling of the Chair.

Mr. ALDRICH. I suggest to the Chair that we are not discussing moot questions.

Mr. BACON. I have offered an amendment.

Mr. ALDRICH. No amendment is in order now.

The VICE-PRESIDENT. The Senator from Georgia presented an amendment which, as the Chair understood, he did not formally offer. Does the Chair understand the Senator to offer the amendment now?

Mr. BACON. Yes; I do.

The VICE-PRESIDENT. The Chair must rule that the amendment is not now in order, it being an amendment in the third degree.

Mr. BACON. I am perfectly content with that, in the assurance that that amendment must be in order at some time, and therefore, if not in order now, it will be recognized hereafter.

Mr. SHIVELY. I do not intend, Mr. President, to detain the Senate at all by any discussion, but I should like to have permission to have the Secretary read a short communication.

The VICE-PRESIDENT. In the absence of objection, the Secretary will read as requested.

The Secretary read as follows:

OFFICE OF CITIZENS' BUILDING
AND LOAN ASSOCIATION, "B,"
La Fayette, Ind., June 29, 1909.

Hon. BENJAMIN F. SHIVELY,
Washington, D. C.

DEAR SIR: The undersigned directors of the Citizens' Building and Loan Association, of La Fayette, Ind., respectfully but earnestly wish to protest, through you, against the proposed tax upon the net earnings of corporations, so far as the same relates to building and loan associations, believing that such a tax would be disastrous to them. They are not organized for profit, but for the public good. This association has been in existence for more than twenty-three years and solely through its agency hundreds and hundreds of dwellings have been built for laboring people and those of limited means who otherwise would be without a home and paying rent.

No salaries are paid except to the secretary. Some of us have been directors from its inception, and all for many years, serving without salary. The success of the institution is a matter of great pride to us, and the good it is doing in securing homes for worthy but poor people, making them better and more patriotic citizens, making them taxpayers instead of dependent, because they become seized of a fee-simple title to a part of this great country, is reward enough for us. The State of Indiana makes ample provision for inspection and supervision by the auditor of state, and our books and reports are regularly inspected.

We appeal to you to use your influence against the passage of this bill so far as the same affects building and loan associations, believing as we do that its passage would seriously damage such associations and place an additional burden upon the man who is struggling to pay for the little home that shelters his family.

Respectfully, yours,

JOHN B. WAGNER, J. L. CALDWELL,
CHARLES F. WILLIAMS, JOHN M. HERTLEIN,
ROBT. PRASS, BARNEY C. WIEBERS.
H. ROSENTHAL,

Mr. SHIVELY. I have only offered that as an expression of the sense of a large body of citizens of Indiana.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Rhode Island [Mr. ALDRICH] to the substitute of the Senator from Massachusetts [Mr. LODGE].

Mr. DICK. Mr. President, in line with the communication which has been filed by the junior Senator from Indiana [Mr. SHIVELY], I have a large number of communications from building and loan associations in Ohio asking for the exemption of building and loan associations from the operations of the corporation-tax provision. I will not ask that they be read, but will ask that they be printed in the RECORD; and at the proper time I shall offer an amendment to exempt building and loan associations from the operation of the proposed act.

The VICE-PRESIDENT. In the absence of objection, permission is granted to print the matter referred to in the RECORD.

The matter referred to is as follows:

THE OHIO MUTUAL SAVINGS AND LOAN COMPANY,
Cleveland, Ohio, June 28, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: I desire to interest you on behalf of the building and loan companies, asking that they be exempted from paying the corporation tax as proposed in the tariff bill now under consideration.

Practically all of the loans of such are in comparatively small amounts and to people making monthly payments thereon. The borrower is usually a member holding stock of the company and depends upon the dividends to help pay the debt; thus, if dividends are decreased for any reason, that much longer time is required to pay the loan. For this reason most building and loan companies have a very large stock account and very small deposits, exactly reversing the usual bank conditions, and for this reason such a tax would cost such institutions an enormously larger proportion of tax than in most other forms of corporation.

For instance, this company, with $425,868 of capital, has only $113,032 of deposits, and total assets of $641,464, while most any bank with that amount of capital would have from five to twenty millions of deposits, and not pay any more tax than we.

Respectfully submitted for your consideration.

C. F. DIXON, *Secretary.*

WOOSTER, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: In your consideration of the proposed corporation tax we wish to urge you favorably to consider the exemptions made in the President's recent message. This tax, if placed upon the local building and loan companies, would certainly work hardship to the many thousands of wage-earners who are its patrons.

Very truly, yours,

THE WOOSTER BUILDING AND LOAN ASSOCIATION CO.,
J. W. HOOKE, *Secretary.*

MARIETTA, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: Representing 1,500 stockholders—for the most part small wage-earners that can ill afford such a penalty upon their thrift—we earnestly request your assistance in securing the exemption of building and loan associations from the operation of the proposed corporation tax.

Respectfully,

THE PIONEER CITY BUILDING AND LOAN COMPANY,
WM. H. H. JETT, *President.*
J. S. H. TORNER, *Vice-President.*
S. J. HATHAWAY, *Second Vice-President.*
FRED W. TORNER, *Secretary.*
J. C. BRENAN, *Attorney.*
J. M. WILLIAMS.
D. G. BORGL.
C. L. BAILEY.

EAST LIVERPOOL, OHIO, *June 16, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

MY DEAR SENATOR: Does the proposed law taxing the net income of corporations include in its provisions the taxing of mutual savings banks or building and loan associations? If so, do you not think they should be exempted from its provisions, and will you not take steps toward that end?

The building and loans of the State have over 400,000 members, with assets of over $140,000,000, and should not be taxed for being thrifty and economical.

Awaiting an early reply, I am,

Yours, most respectfully,

JNO. J. PURINTON,
President of Ohio Building Association League.

AKRON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: We wired you this morning as follows: "Kindly use efforts to have building and loan associations exempted from corporation tax."

Will you please use your best efforts to have building and loan associations exempted, from the fact that these institutions are mutual ones and are operated exclusively for the benefit of the members, and the profits are distributed, and we sincerely hope that the recommendations will be followed and that the associations may be exempted.

Thanking you for any efforts put forth in our behalf, we are,

Yours, respectfully,

THE HOME SAVINGS COMPANY,
W. C. HALL, *President.*

THE BRUNER-GOODHUE-COOKE COMPANY,
Akron, Ohio, June 28, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

MY DEAR SENATOR: There is a bill now before the Senate which, among other things, proposes to levy a 2 per cent tax on the net income of building and loan associations throughout the country.

This, as you well know, will be an imposition of a burden which no building and loan association can stand. They are to a certain degree philanthropical institutions, and by imposing a tax on their business it would be the grossest hardship to millions of their patrons. You are well enough versed in the matter and the cheapness with which these concerns are run to know that this tax could not be paid by the associations, and would eventually put them all out of business.

Trusting you will give it your attention, and with kindest regards, I am,

Very sincerely, yours, N. P. GOODHUE.

WAVERLY, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SENATOR: I noticed in last Sunday's paper that the bill introduced in the Senate proposes to tax all corporations 2 per cent on their net earnings, which will include building and loan companies. The State of Ohio has probably the largest number of building and loan companies of any State in the Union, and has more money invested in such companies. Three-fourths of this money was placed in such companies by the frugal laboring man and woman. A 2 per cent tax on the net earnings of such companies will put them out of business or bring about an increased rate of interest to borrowing members. The law now in this State requires at least 5 per cent of the net earnings of such companies to be set apart as a "contingent fund" for contingent losses. I am the attorney for a local company at this place, and our company has only been able to pay a semiannual dividend of 2½ per cent. Not many other companies pay any better. They can not unless they exact an unreasonable rate of interest. You can see what a tax of 2 per cent on the net earnings would do to such companies. I could see no serious objection to the bill recommended by the President, for he proposed that building and loan be exempt. Companies earning less than $5,000 ought to be exempt. The measure anyway, like an income tax, is odious to the average man and will prove to be very unpopular with the people, and such measures ought not to be resorted to in times of peace. I hope you can see your way clear to help defeat this bill so far as it will apply to building and loan companies.

Very respectfully, F. E. DOUGHERTY.

TROY, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: At the regular meeting of the People's Building and Savings Association Company last evening I was directed by the unanimous vote of the directors to write you to use your influence and vote to secure for building associations the exemptions in the proposed corporation tax suggested by President Taft.

Our own deposits represent almost entirely the savings of the wage-earners of this city, and speaking for the directors, who, with one exception, are Republicans, and for myself, a member of the same party and an officeholder by virtue of my membership in it, I do not believe that the Republican party can afford to place a tax upon the thrift of this class of people, while ignoring the opportunities presented by the income tax to lay the burden upon those best able to bear it, and who for the most part escape their just proportion of the Nation's taxes.

Whether it is just or not, there is a feeling that our party has not kept faith in revising the tariff upward, and to impose a direct tax, like that proposed by the corporation tax, would appear to the people only as another evidence of our party's and our representatives' indifference to that great majority—the common people.

I am writing this because I believe that not only natural justice, but party expediency, demands that for the balance of the session of Congress the Republican party should father only such legislation as will remove the feeling that I speak of and make the wage-earner feel that his voice has penetrated Washington and that the party will protect his modest savings from the excise man.

Very truly, yours,

J. C. FULLERTON, Jr.

HAMILTON COUNTY LEAGUE OF BUILDING ASSOCIATIONS,
Cincinnati, April 1, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: The board of trustees of the Hamilton County League of Building and Loan Association have instructed me to inform you of their fears that the new tariff and taxation bill when completed will contain a clause levying a tax on dividends declared by corporations. Unless otherwise provided, a clause of that kind would tax the earnings of building and loan associations.

The statutes of Ohio, as do the statutes of nearly every other State, require that a building and loan association organize as a stock company, and as such the associations are required to distribute their earnings in the shape of dividends to the credit of the members. Section 25 of the Ohio law governing building and loan associations reads, in part, "and a further portion of such earnings, to be determined by the board of directors, shall be transferred as a dividend annually or semiannually in such proportion to the credit of all members."

We assume that it is not the intention of the Members of Congress to include in its legislation anything that would have a tendency to destroy the influences for thrift and economy exerted by building and loan associations.

We therefore respectfully request that in the framing of the tariff or taxation law you prevent the application of provisions inimical to building and loan associations.

According to the state report, just issued, the assets of the associations in Ohio aggregate the sum of $139,340,424.57, and the membership is 327,662.

Very respectfully, FRED. BADER, *President.*

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: Representing the bankers of Ohio, we respectfully urge you to use your influence in exempting from corporation tax all banking institutions.

THE OHIO BANKERS' ASSOCIATION,
By W. F. HOFFMAN, *President.*
S. B. RANKIN, *Secretary.*

FREMONT, OHIO, *June 30, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

MY DEAR SENATOR: I am writing you a few lines, as a friend of yours and a good Republican, to inform you what the people who are stockholders in various corporations in this city think of the 2 per cent tax proposition that Congress is trying to impose upon corporations. If the people all over the country feel as they do around here in regard to it, it will certainly defeat the Republican party in 1912.

You know the corporations have to pay their state corporation taxes, and our taxes at home now are over 4 per cent, which is all that the average person can afford to pay in taxes; and now if we have to pay an additional government tax of 2 per cent, all small corporations might as well go out of business.

If the Government would stop sending out such vast quantities of printed matter, that is scarcely ever read by the average person and only thrown into wastebaskets, it would go quite a ways toward meeting the required deficiency that the Government claim they need; also a great many other extravagant expenses could be curtailed.

I am a high-tariff man, and I firmly believe that the tariff should be kept high enough to meet all legitimate expenses of the Government.

I sincerely trust you and Senator BURTON will do all in your power to defeat the 2 per cent corporation tax.

Yours, very respectfully,

A. H. JACKSON MANUFACTURING COMPANY,
By A. H. JACKSON, *President.*

P. S.—If you are really convinced that a tax should be levied on corporations, it should be on all amounts in excess of all earnings of at least 10 per cent, which would cover dividends and wear and tear of machinery and buildings. After that amount is exempt it would not matter if the tax was even 3 or 4 per cent, as a corporation making more than that amount could well afford to pay it. I trust you will do all you can to get things fixed up properly.

CINCINNATI, OHIO, *July 1, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

We protest against the passage of the proposed bill taxing the net income of corporations. As common stock can receive no dividends until bonds and preferred stocks are cared for, it in effect places the burden entirely upon the holders of common stock, who are usually those actively engaged in the building up of their industry and of such moderate means that it is necessary that they take the risks of the business for the chance of securing greater rate of income. It leaves untouched those securities which are most generally held by people of large fortunes. It is peculiarly unfortunate at this time that this burden should be thrown upon the common-stock holders owing to the growing disposition upon the part of corporations to interest their workmen more closely with them through ownership of common stock in the corporation, as common stock reflects the increased efficiency and not the preferred. That workingmen will avail themselves of such opportunity, I might mention this company has had such plan in effect for twelve years, and its employees other than its officers own in excess of $2,000,000 worth of its stock, every share of which is common. We ask that your efforts be exerted against its passage.

THE PROCTER & GAMBLE COMPANY,
WILLIAM COOPER PROCTER, *President.*

KENTON, OHIO, *July 1, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We most earnestly protest against corporation-tax amendment as gross injustice to small stockholders. Hope you will vote and use your influence against it.

THE CHAMPION IRON COMPANY.
THE KENTON NATIONAL BANK.
THE KENTON GAS ENGINE COMPANY.
THE CEMENT BLOCK AND ROOFING COMPANY.
THE SCIOTO SIGN COMPANY.
THE ROSER RUNKLE COMPANY.
THE COMMERCIAL BANK.

BLANCHESTER, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: We beg to express the hope that you will oppose vigorously the proposed corporation-tax amendment. It seems to us that this law would be a very unfair discrimination against the corporations that compete with individuals and firms or copartnerships doing a similar business.

Nearly all of our competitors are individuals or copartnerships, and we do not feel that we will be receiving a "square deal" if this act should become a law.

We have no objections to taxing the incomes of corporations, provided a similar tax is charged against the incomes of individuals and firms. We believe that corporations are entitled to and should receive a square deal.

We will be very much pleased to receive a favorable reply from you.

Yours, truly,

THE DEWEY BROS. CO.

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: We hope you will oppose and use your influence against the proposed law taxing the net income of corporations. As you are aware, we pay the State 2 per cent on capital employed. In addition to this, our city taxes are 3.30, while the margin of profit in all wholesale lines is constantly growing narrower. This condition and the steady increase in salaries due to the higher cost of living would make this additional tax a greater burden than our business would justify.

Thanking you in advance for any effort you may make, we are,

Respectfully, yours,

THE SHELDON DRY GOODS CO.,
ROBT. E. SHELDON, *President.*

THE COLIN GARDNER PAPER COMPANY,
Middletown, Ohio, April 27, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: Noting what is being done regarding the tariff and the talk of adding to it tax on dividends of corporations and inheritances, I wish to say that, having talked with a great many of our business men regarding this proposed tax, I have yet to find one who thinks the emergencies demand a tax of this kind. This would be proper in a time of war, but under present conditions I feel sure it would be a deathblow to Republican success in the coming elections, and I feel sure it would result in the Democrats carrying our State. I therefore urge upon you the importance of eliminating such taxes as those above named from the Payne tariff bill.

Hoping your vote may be recorded against them, I beg to remain,

Yours, very truly,

C. GARDNER.

PIEDMONT, OHIO, *April 23, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

MY DEAR SIR: I write to urge that you support the income-tax amendment to the tariff bill. I feel sure that in so doing you will register the will of a large majority of your constituency. This method of raising revenue will inflict no hardship, while a tariff on necessities imposes burdens upon those least able to bear them. You represent a large Commonwealth, in which the middle classes deserve the greatest consideration.

You need not be advised as regards the iniquities of the present tariff system. You well know the fallacy of the protective tariff scheme, though you are perhaps committed to the same. Why not break away from servility to the favored few and finish your senatorial career in defense of the many? You can yet make us all proud of you. No public man who dares stand up in defense of the common people has ever yet gone unrewarded.

Very sincerely, yours,

A. C. WALLACE,
An obscure farmer.

SPRINGFIELD, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

On behalf of the stockholders of the Springfield Railway Company, who would suffer by the levying of a tax on the net receipts and the discrimination thereby made, and as it is an attempt by indirection to impose an income tax, I desire to protest against the passage of the pending amendment and trust that it will not prevail.

OSCAR T. MARTIN.

DAYTON, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

The stockholders of the People's Railway Company, Dayton, Ohio, protest against the tax upon corporations as unjust and discriminating.

THE PEOPLE'S RAILWAY COMPANY,
By J. A. MCMAHON, *President.*

CLEVELAND, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
Senate:

We apprehend that a complete and impartial consideration of the numerous ways that life insurance companies are now taxed will disclose that any additional taxation in that direction would be entirely unjust, and we earnestly hope that you will favor the exemption of life insurance companies from the proposed corporation-tax bill.

WM. H. HUNT,
Acting President the Cleveland Life Company.
W. S. SHELTON,
Secretary.

CINCINNATI, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
Senate, Washington, D. C.:

We earnestly hope you may see your way clear to assist in securing exemption of life insurance companies from proposed tax on net incomes of corporations. Life companies now bear a heavy burden of taxation in all States and Territories, out of proportion to that paid by other corporations. All these taxes fall on the policy holder or on the beneficiary of insurance, a class of citizens, as a rule, least able to bear such exactions. Letter follows.

JESSE R. CLARK,
President, the Union Central Life Insurance Company.

CINCINNATI, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
Senate:

Respectfully urge exemption of life insurance companies from 2 per cent corporation tax. Large portion of such tax would unavoidably fall upon policy holders.

THE COLUMBIA LIFE INSURANCE COMPANY,
W. C. CURLKINS, *Vice-President.*

THE CLEVELAND LIFE INSURANCE COMPANY,
Cleveland, Ohio, June 25, 1909.

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is merely to confirm telegram sent you today from this office.

We apprehend that a complete and impartial consideration of the numerous ways that life insurance companies are now taxed will disclose that any additional taxation in that direction would be entirely unjust, and we earnestly hope that you will favor the exemption of life insurance companies from the proposed corporation-tax bill.

Expressing kind personal regards, I beg to remain,

Very truly, yours,

WM. H. HUNT,
Acting President.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

We respectfully but earnestly protest against the proposed tax on corporations.

C. W. RAYMOND COMPANY.

CANTON, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: Regarding the contemplated bill to tax corporations on their earnings, beg to advise you of a few reasons why we consider it impracticable and unbusinesslike.

If we are rightly advised, should this bill become a law, it will tax, at the rate of 2 per cent, the earnings of all corporations, but not necessarily partnerships. This will necessarily mean that each corporation must furnish to the proper authorities and make public the result of each year's business. In event a corporation shows, by its balance sheet at the end of the year, that it has lost money, or made little or nothing, and this information is given to the world at large we, as a firm selling to that house, would probably refuse to do business longer with them, except on a C. O. D. basis. Our action would be similar to the action of probably all other firms, and the banks with whom this firm might be doing business would, in all probability, restrict or decrease the line of credit. The resultant effect would be their failure, precipitated solely by the information given as to their financial condition. On the other hand, if this information was not given in a case of this kind, and it was generally known that the firm was not losing money, they would probably pass through the crisis. Now, take the other case: Suppose a firm is capitalized at $1,000,000 and is doing a very lucrative business—let us say they are making $500,000 on their million—this information must be given to the world. What is the result? It immediately invites competition in that particular line. If a man is looking for an investment in business and is undecided where or how to invest his money, and learns that some particular firm is making 50 per cent per annum on a certain investment, the natural conclusion would be that the investor will endeavor to engage in that line of business rather than one that is less lucrative.

Again: The dishonesty of purpose and dishonesty of fact in the average corporation is so much a part of their business that correct returns need not be looked for any more than one puts in an absolutely correct valuation of real estate, personal property, etc., to the tax office. You know, we know, and everybody knows, that proper returns are not made for taxation; and this invites that same thing. Let us suppose, for instance, that this $1,000,000 firm, that makes one-half million a year, does not care to pay $10,000 to the Government annually, or 2 per cent on the half-million earnings. What do they do? Pay out to the president $100,000; to the vice-president, $50,000; to the secretary, $25,000, and so on down the line. These presidents, vice-presidents, secretaries, etc., can become imbued with a philanthropic spirit the next day or two after the returns are made to the proper authorities, and being in a charitable mood they can return, make a present or donation to the firm of $100,000, $50,000, or $25,000. Who can prohibit a man from giving a donation to a charitable institution? And what law will ever be enforced to prohibit a man making a donation to a firm he is interested in? No one on God's earth.

Therefore, for these reasons alone, we believe the bill will be a failure in its operation, if made into a law.

As one of your constituents we would like to have your views on the subject, and if the deductions we have made here are erroneous or incorrect in one or more particulars, we would like to be enlightened and set right.

Yours, truly,

TIMKEN ROLLER BEARING CO.,
W. R. TIMKEN, *Secretary and Treasurer.*

EXECUTIVE DEPARTMENT,
THE UNION CENTRAL LIFE INSURANCE COMPANY,
Cincinnati, June 24, 1909.

Hon. CHARLES DICK,
United States Senate Chamber, Washington, D. C.

DEAR SIR: As president of The Union Central Life Insurance Company, of Cincinnati, I took the liberty of sending you yesterday a telegram as follows:

"We earnestly hope you may see your way clear to assist in securing exemption of life insurance companies from proposed tax on net income of corporations. Life companies now bear a heavy burden of taxation in all States and Territories out of proportion to that paid by other corporations. All these taxes fall on the policy holder or on the beneficiary of insurance, a class of citizens, as a rule, least able to bear such exactions. Letter follows."

Because of the great importance of the subject I have thought it proper to supplement this message with a letter stating briefly some reasons for urging that life insurance companies be exempted from the proposed tax. Without attempting any extended details of arguments supporting the claim that life insurance funds should receive such exemption, I shall refer only to the two propositions suggested in my dispatch, viz:

First. Life insurance companies are already subjected to heavy taxation in all the States and Territories in excess of the proportion paid by other corporations.

Second. Taxes imposed on life insurance companies are a burden, not on the corporations or the stockholders, if any, but on the policy holders—the widows and orphans—the "wards of the law," who have the greatest need for its protection.

Life insurance companies are now paying in taxes on their premium receipts and other assets more than $10,000,000 a year in the various States and Territories, in addition to taxes on real estate and other tangible property, and in addition to fees and miscellaneous charges aggregating over $2,000,000. The Union Central Life Insurance Company has paid during the past year in local taxes and taxes in the various States and Territories in which it is engaged in business the sum of $966,537.26.

These vast sums, in excess of all needs for expenses of state supervision, are taken by the States as revenue for general purposes. If this money were not thus demanded of life insurance companies, it would be used, under the law and policy contracts, to reduce the cost of insurance to policy holders.

In August, 1908, the National Convention of Insurance Commissioners, in session at Detroit, Mich., in an effort to combat this growing evil, adopted a report and recommendation on the "Injustice and inequality of life insurance taxation." In this report the commissioners clearly pointed out that life insurance taxes are a burden on the policy holders and not on the company, and made this statement among others:

"Life insurance taxes either increase the cost of insurance or diminish the amount of it. In the one case they fall on the policy holders, in the other on the beneficiaries of the insurance. The State should not permit the misappropriation of these funds by insurance management; it should not itself divert them from their intended use."

It seems to me this statement of the commissioners applies equally well to the General Government. I sincerely hope you will be able to take that view, and contribute your valuable assistance to the interest and protection of the citizens who invest their money in life insurance policies.

Yours, respectfully,

J. R. CLARK, *President.*

COLUMBUS, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

The executive committee of the Ohio State Life Insurance Company respectfully requests that such companies be not included in the proposed law to tax corporations.

LEWIS C. LAYLIN, *President.*
JOHN M. SARVER, *Secretary.*

DAYTON, OHIO, *June 24, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

As large manufacturers, we enter vigorous protest against corporation tax.

BUCKEYE IRON AND BRASS COMPANY.

DAYTON, OHIO, *June 24–25, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Representing nearly 400 stockholders of the City Railway Company, of Dayton, we protest against the passage of the corporation-tax amendment as an injurious and discriminating measure. We trust that you will vote against passage of same.

THE CITY RAILWAY COMPANY,
E. D. GRIMES, *President.*

DAYTON, OHIO, *June 24–25, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

We protest against the passage of corporation-tax amendment as an injustice to stockholders in corporations.

THE TOWER VARNISH AND DRYER CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

The proposed corporation tax is unjust discrimination. We very respectfully protest.

CRAWFORD MCGREGOER & CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully but vigorously protest against proposed tax on corporations.

HOME TELEPHONE COMPANY,
J. E. FEIGHT, *Vice-President.*

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK:

Please file our earnest protest against proposed tax on corporations.

SEYBOLD MACHINE CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
Senate:

Proposed tax on corporations is a double tax and unjust. We earnestly protest against it.

JOYCE, CRIDLE & CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington:

We respectfully protest against corporation tax, as we consider it unfair.

BROWNELL CO.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We earnestly protest against taxing the incomes of corporations having unlisted securities.

THE LOWE BROTHERS' COMPANY.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully but earnestly protest against proposed tax on corporations. It is decidedly unjust.

STOMPS BURKHARDT COMPANY.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We feel corporation tax is an unjust discrimination against corporate interests of the country. We prefer a stamp tax as being more equitable and believe it easier to collect.

BEAVER SOAP COMPANY.

THE DILLER MANUFACTURING COMPANY,
Bluffton, Ohio, June 23, 1909.

Senator DICK,
Washington, D. C.

DEAR SENATOR: The writer incloses a copy of his letter to President Taft, and requests that you use your influence to secure the defeat, or at least the modification, of the proposed measure.

Respectfully, yours,

PETER DILLER.

JUNE 23, 1909.

To His Excellency WILLIAM H. TAFT,
President of the United States, Washington, D. C.

ESTEEMED SIR: The writer wishes to voice an earnest protest against your recommendation to tax the net profits of corporations, and begs to point out a few phases of the proposed legislation which, in his opinion, merit your further consideration.

Permit me to state at the outset that such legislation would prove fatal to many small industrial corporations. It would affect a property right, by compelling these corporations to reveal their private business to unincorporated competitors.

Another aspect of the proposed measure, and one which has apparently escaped the attention of the press, is the fact that it would wipe out the close corporation. This is quite right with certain classes of corporations, but not with all. The close industrial corporation is a time-honored institution, and should not be thus ruthlessly dealt with. The stockholders whom I represent in this company would surrender their charter rather than conform to such an invasion of their private rights.

You advance as an argument in favor of the proposed measure the limited liability of stockholders. How about the limited company which is not incorporated?

You also state that it would tax success. Beg to state that the appropriateness of this comment hinges on your definition of the word. Many eminently successful men have nearly all their assets in bonds or real estate. I am therefore obliged to assume that you mean by success the effort and enterprise which rightly lead to the accumulation of property. I am unwilling to believe that you have fully considered this phase of the subject and that you would wittingly substitute enterprise for property as the basis of taxation.

I beg to suggest that a wisely enacted national incorporation act would avoid the objections to the proposed legislation and at the same time yield vast revenue to the Federal Government. Moreover, the honest company would prefer to have a national charter and be freed from unnecessary state restrictions. What has become of our much-vaunted free trade among the States when an Ohio corporation must pay a special tax in several States in order to transact business there?

I think it can be affirmed, without fear of successful contradiction, that small corporations are already paying much more than their proportionate share of taxation. If the present policy of saddling taxation on the corporations is to be continued, the day is not far distant when the small corporation will be taxed out of existence.

There is still another phase of the proposed measure, but the writer holds you in too high esteem to assume that this measure is to be made a subterfuge for tariff reform. This would indeed be "welding a pewter handle to the wooden spoon."

Respectfully, yours,

———— ————.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

We respectfully but earnestly protest against proposed tax on corporations.

JOHN ROUSER COMPANY.

DAYTON, OHIO, *June 25, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully but earnestly protest against the proposed tax on corporations.

THE C. W. RAYMOND CO.

DAYTON, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully but earnestly protest against proposed tax on corporations.

SPEEDWELL MOTOR CAR CO.

AKRON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Senate Chamber, Washington, D. C.

MY DEAR SENATOR: Judging from the debates in your honorable body in the very recent past, one is almost forced to the conclusion that newspapers and newspaper publishers constitute a class of "undesirable citizens" who, instead of having the right of protest, ought to keep quiet and be glad they are alive. But notwithstanding the unfavorable opinion which your body entertains of that class to which I belong, I am nevertheless going herewith to make my second protest concerning legislation now before your body. And that protest is against the passage of the corporation-tax bill.

In the first place, the day you pass that measure that day you will confess that the principle of protection, that our revenues should be raised by a tariff, is a snare and a delusion; that it is a failure, and that the Republican party admits that it is such. If this attitude is correct, then I would ask how do you expect the Republican papers of this country to meet the issue? So much for the party doctrine.

Now to the merits of the measure. Perhaps I do not understand anything about taxation. Just assume that I do not. Then pardon these questions: Why should the deficit in government expenditures be placed upon one particular class of our people? Why should a corporation doing a business at a profit of $10,000 a year be compelled to pay a federal tax of $200, while a partnership doing the same business, at the same or a greater profit, contributes nothing. The Federal Government extends no protection to the corporation that I am aware of that it does not also extend to the individual. If there are any peculiar benefits arising from the corporate existence, they are derived from the State and not from the General Government. And the State of Ohio has already imposed upon us one corporation tax. I do not want to argue this matter. I just want you to know how I, as the chief owner of one corporation, feel about it. Nor is it on behalf of this company alone that I protest. As an individual I own stock in a dozen other corporations, all of which under this most unjust measure will be affected.

I have not taken a census to find how others regard the measure, but I have yet to encounter the first man who has made a success of his own business who is in favor of it. It will please the socialists. I have heard of no one else who has so far manifested any ecstatic delight over it. We are going to have the devil's own time of it to keep Ohio Republican next year. Pass this bill and, unless I miss my guess, it will be impossible to prevent a Democratic legislature.

Yours, very truly,

THE BEACON JOURNAL COMPANY,
C. L. KNIGHT, *Manager.*

DAYTON, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We believe that the tax on corporations, as proposed, would interfere with return of prosperity and be a serious handicap to future development. We respectfully enter protest.

DAYTON BREWERIES COMPANY.

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: We write you with reference to the proposition now under consideration looking toward the taxation of net profits of corporations. We do not know whether the idea has taken the form of a bill, but, basing our judgment upon what we gather from newspapers, have no hesitancy in characterizing the move as thoroughly unfair and unjust.

Ours is an incorporated company under Ohio laws. We pay here our city and county taxes. We pay a franchise tax of one-tenth of 1 per cent upon our capital. In return we get from the city and county protection and advantages. The State grants us in return privileges as a corporation not conferred on individuals. It limits the liability of our stockholders, etc. From all three we get certain direct, well-defined benefits in return for the payment of our money. The General Government does not propose to give us nor do anything for us in return for the money we are supposed to pay it.

Another thing is this: There are wholesale houses in the same business we are, both in and out of this State, conducting their business as individuals or partnerships, which come into our territory and city, selling goods to the same people we do. These jobbers will not pay this special tax. To be sure, they pay none of the state franchise tax now; but adding the new tax to that already imposed by the State will enable individuals or partnerships to either undersell us or cut severely into our fair and legitimate profit, or else lose our customers. While we instance our own case, the same thing will apply to all others. This is an unfair advantage in favor of the nonpaying party. The Government virtually reduces the profit coming to us to the advantage of an individual or partnership competitor, and gives nothing in return. This is not only confiscation, but the Government is in addition aiding the party who pays nothing, to the detriment of the corporation whose property it has taken.

Another thing is, that the inquisitorial report a corporation is obliged to make leaves but little to be guessed at concerning its business. The very vitals are exposed. You know any careful business man jealously guards the secrets of his books and business. Yet here is a case where the whole of a company's business becomes a part of the public record. Secrecy upon the official who handles the report may be enjoined, but the idea of divulging that which is required of a corporation is so very repugnant to the average man that it alone should condemn the act. Not only this, but the information given would undoubtedly be, in a good many cases, to the injury of those reporting.

No doubt there are other serious objections to the measure. These suggested are bad enough, from a practical business point of view, to kill such an act.

We respectfully ask you to use your influence against this scheme and vote against this or any like measure.

Very respectfully, yours,

THE GREEN-JOYCE CO.,
By JOHN JOYCE, Jr., *President.*

DAYTON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

DEAR SIR: We have just telegraphed you as follows:

"We respectfully protest against the unjust discrimination and inequitable corporation tax proposed."

The collection of a tax on the net earnings of corporations, as proposed in the bill before the Senate, is to us most unjust, discriminating, and inequitable, and we earnestly and respectfully protest against its passage. Were all corporations of the same amount of capitalization, or had they all the same percentage of earnings, there would be less of the inequitable situation than there now exists in its present form. Take, for instance, the company the writer represents: We are one of five subsidiary companies, the stock held by holding company in New York, with a large issue of collateral bonds. As we understand the proposed action, each subsidiary company would pay a 2 per cent tax upon its net earnings, and, after deducting all operating expenses, would pay over to the holding company all of its net earnings, a large portion of which would be paid as interest by the holding company. You will thus see that in reality we would be paying tax upon that portion of our earnings representing interest on bonds.

Then, too, on general principles it seems to us eminently unfair that an individual engaged in business alongside of us, with the same capitalization and equally as large earnings, and as fully protected in his commercial rights as we are protected, would avoid any tax whatever; and on top of this we have registration and annual taxes on account of our incorporation to pay in every State of the Union where we maintain an office in addition to our regular state property tax that we, like all others, must pay, thus piling up against our corporations a vast amount of tax, the burden of which we should not be asked to bear. We hope the measure may not pass the Senate.

Very truly, yours,

THE COMPUTING SCALE COMPANY.

CINCINNATI, OHIO, *June 28, 1909.*

Senator DICK,
Washington, D. C.

DEAR SIR: Referring to the proposed law to tax the income of corporations, we beg to state that while we would not be directly affected by such a measure, we are opposed to the proposed law.

It is, in our judgment, un-American, as it directs toward a particular class. It possesses an element of socialism. In our judgment a stamp tax, or some tax of a general nature that would not be any great burden to any particular class, would be more satisfactory to all and less disturbing to the commercial interests of our country.

The suggestion that the proposed tax would give the federal authorities a full opportunity to supervise the acts of corporations does not seem to us to be valid. A commission appointed for that purpose, similar to the railroad commission, vested with definite authority, would be, to our judgment, more effective.

We trust that you will take a similar view to ours, and we ask you to vigorously oppose the proposed law to tax the income of corporations.

Yours, very respectfully,

LEWIS WALD & CO.

CINCINNATI, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.

MOST WORTHY REPRESENTATIVE: The proposed law taxing the income of corporations, as at present drawn, will apply to mercantile corporations, which under the existing laws are certainly paying all if not more than their just share of the taxes.

It would be unfair to tax us as a corporation unless individuals and copartnerships with whom we come in competition are likewise taxed proportionately the same, whereas it is only proposed to tax corporations.

Please look at it from a reasonable standpoint.

We are, very respectfully, yours,

THE ALMS & DOEPKE COMPANY,
WM. H. ALMS, *President.*

CINCINNATI, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: Referring to the proposed Aldrich bill in regard to 2 per cent tax on incomes of over $5,000 to be paid by corporations alone, we think it is unfair, and we can not see why professional men, farmers, capitalists, firms, and others that have incomes over $5,000 should be exempt. At any rate, we believe the merchants throughout the country are taxed sufficiently without any additional burdens. We trust you can see it in this light and that you will vote against this proposed measure.

Respectfully,

THE MEYER, WISE & KAICHEN COMPANY,
By SIG. WISE, *Vice-President.*

DELAWARE, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.

DEAR SIR: Will you do me the favor of forwarding to me a copy of the bill now before the Senate providing for the taxation of the net earnings of corporations?

For some clients of mine here I am particularly interested to know whether, by this proposed law, the reports of corporations as to their earnings will be public property. Any information which you can give as to this point will be appreciated very much.

Thanking you in advance for the favor, I am,

Very respectfully,

F. A. MCALLISTER.

DELAWARE, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

On behalf of members of building and loan associations of Delaware County, Ohio, we respectfully urge that you use your best efforts to exempt these savings institutions of the wage-earners from proposed corporation tax, as was the case in the old income-tax law and the Spanish-American war stamp act.

THE FIDELITY BUILDING ASSOCIATION AND LOAN COMPANY,
D. H. BATTENFIELD, *President.*
PEOPLE'S BUILDING AND LOAN COMPANY,
C. RIDDLE, *President.*

YOUNGSTOWN, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Proposed tax on corporations will be disastrous to building associations. Ten thousand working people in this city would suffer. Exempt the associations.

THE HOME SAVINGS AND LOAN COMPANY.

TOLEDO, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

This association, the pioneer in northwestern Ohio, has been the means of the building of several thousand American homes. Our fifteen hundred members protest against the contemplated 2 per cent corporation tax, unless as proposed by President Taft, that associations of this character be exempt therefrom.

THE TOLEDO SAVINGS ASSOCIATION,
A. L. SPRING, *Secretary.*

TOLEDO, OHIO, *June 29, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

The 18,000 building association members with average holdings of less than $300 each, represented by the Toledo Building Association League, urgently protest against the strikingly unfair discrimination the 2 per cent corporation tax will inflict upon us. If we are not exempted as proposed by President Taft, it will ruin our present investment and will drive beyond the reach of the makers of American homes the 600,000,000 of special home-building funds now held and used by building associations in the United States for that purpose.

A. L. SPRING, *Secretary.*

YOUNGSTOWN, OHIO, *June 30, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Proposed corporation tax will work a hardship to building associations. In former acts of this nature they have been exempted, and they should be exempt now. Working people everywhere will benefit by their exemption.

J. R. WOOLLY,
Vice-President Home Savings and Loan Company.

BRIDGEPORT, OHIO, *June 28, 1909.*

Senator DICK,
Washington, D. C.:

Please oppose tax on building and loan associations.

W. W. SCOTT.

NORWALK, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Can not stand 2 per cent tax. Get building and loan companies exempt.

The Home Savings and Loan Company, C. H. Gallup, president; The Ohio Mutual Savings and Loan Company, Henry C. Ellison, president; The Union Savings and Loan Company, H. Q. Sargent, president; The Mutual Building and Investment Company, J. B. Wilberding, secretary; The Ohio Savings and Loan Company, Henry Grombacher, secretary; The Provident Building and Loan Company, W. R. Dunbar, secretary.

CLEVELAND, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We solicit your earnest endeavor to exempt building and loan associations from the corporation tax, as in this case the burden would fall upon thrifty working men and women trying to pay off mortgages on their houses.

Cleveland Savings and Loan Company, William R. Creer, secretary; The Cuyahoga Savings and Loan Company, Davis Hawley, president; The Equity Savings and Loan Company, H. W. S. Wood, president; The Economy Building and Loan Company, O. J. Hodge, president; The Cleveland West Side Building and Loan Company, Jacob Haller, secretary.

YOUNGSTOWN, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Building and loan associations should be exempt from proposed corporation tax. Similar acts in the past have always exempted them. Such exemption would benefit 400,000 wage-earners in Ohio alone.

JAMES M. MCKAY,
Vice-President Ohio Building Association League.

HAMILTON, OHIO, *June 27, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

Means ruination to building associations, unless exempted from corporation tax.

THE HOME LOAN AND BUILDING ASSOCIATION,
O. V. PARRISH, *Vice-President.*

DAYTON, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

We urge to use your efforts to exempt mutual building and loan associations from income tax. Seven thousand wage-earners and small savers in this association alone would thus be taxed.

AMERICAN LOAN AND SAVINGS ASSOCIATION.

BELLAIRE, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Senate Chamber, Washington, D. C.

Over 5,000 working people ask you to oppose bill to tax incomes of building associations.

THE BUCKEYE SAVINGS AND LOAN CO.,
By W. G. MCCLAIN, *Secretary.*

COLUMBUS, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Building and loan associations should be exempt in proposed corporation tax.

L. L. RANKIN.

DAYTON, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

On behalf of 50,000 wage-earners who have their savings in the Dayton building associations you are urged to consider the justice of having building associations exempted from the operation of the proposed tax on corporations.

MONTGOMERY COUNTY BUILDING ASSOCIATION LEAGUE,
S. RUFUS JONES, *President.*

MARIETTA, OHIO, *June 27, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

Exemption building associations from corporation tax earnestly requested.

FRED W. TORNER,
Secretary Pioneer City Building and Loan Company.

NEWARK, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Building associations should be exempt from corporation tax. Your influence should be in this direction and will be appreciated.

E. M. BAUGHER.

ZANESVILLE, OHIO, *June 27, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

Please use your influence to secure exemption of building and loan associations from corporation tax.

THE EQUITABLE SAVINGS COMPANY,
By H. E. BUKER, *Secretary.*

AKRON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Kindly use efforts to have building and loan associations exempted from corporation tax.

THE HOME SAVINGS COMPANY.

DAYTON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

We respectfully protest against the unjust discrimination and inequitable corporation tax proposed.

THE COMPUTING SCALE COMPANY.

AKRON, OHIO, *June 27, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

Exempt loan associations from incorporation tax; important to all classes.

F. M. COOKE,
Secretary Akron Savings and Loan Company.

MANSFIELD, OHIO, *June 28, 1909.*

Senator CHARLES DICK,
Washington, D. C.:

A tax on building and loan associations, the savings of the masses, in time of peace would menace its existence.

THE CITIZENS SAVING AND LOAN COMPANY,
FRED T. BRISTOR, *Secretary.*

BARNESVILLE, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Officers, directors, and more than 1,000 members protest, and ask your influence for exemption of building associations from 2 per cent tax.

PEOPLE'S BUILDING AND LOAN COMPANY.
HOME BUILDING AND LOAN COMPANY.

ASHTABULA, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

In the bill now pending in the Senate to tax corporations, we urge you, in the name of fourteen hundred stockholders of this company, to use your influence to have building associations exempted from the tax.

THE PEOPLE'S BUILDING LOAN COMPANY,
GEO. B. PAINE, *President.*
A. H. TYLER, *Secretary.*

MASSILLON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Our association, representing about two million assets and 4,000 members, pray for exemption of such institutions from operations of corporation-tax bill.

THE FIRST SAVINGS AND LOAN CO.

CINCINNATI, OHIO, *June 26, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Three hundred and twenty-five thousand building and loan association members in Ohio respectfully urge you to secure proper exemption from proposed tax on corporations. Congress has always granted building and loan associations exemptions from the operation of previous taxes on income. The proposed tax, if it includes building and loan associations, will be unjust and a tax on the thrift of the wage-earner.

AMERICAN BUILDING ASSOCIATION NEWS,
H. S. ROSENTHAL, *Editor.*

CINCINNATI, OHIO, *June 26, 1909.*

Senator CHARLES DICK,
United States Senate, Washington, D. C.:

The Hamilton County League of Building and Loan Associations directs me to again call your attention to the necessity of exempting the incomes of building and loan associations from the operations of the proposed corporation tax.

FRED BADER, *President.*

CANTON, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Stark County building associations, with 7,500 members, urge necessity of exempting their incomes from operation of proposed corporation tax.

J. KHITING, Jr.

MIDDLETOWN, OHIO, *June 28, 1909.*

United States Senator DICK,
Washington, D. C.:

Use your influence to exempt building associations from corporation tax.

THE MIDDLETOWN BUILDING AND LOAN ASSOCIATION.

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
United States Senate, Washington, D. C.:

Representing the building and loan associations of Ohio, with half million members and depositors, we respectfully urge that you exempt from the corporation-tax bill the building and loan associations.

CHAS. H. BROWN,
Secretary Ohio Building Association League.

COLUMBUS, OHIO, *June 28, 1909.*

Hon. CHARLES DICK,
Washington, D. C.:

The Columbus League of Building and Loan Associations respectfully urges that building and loans associations be exempted from the proposed corporation-tax bill.

JOHN F. FERGUS, *President.*
EDWIN F. WOOD, *Secretary.*

The VICE-PRESIDENT. The question is on the amendment of the Senator from Rhode Island [Mr. ALDRICH] to the substitute proposed by the Senator from Massachusetts [Mr. LODGE]. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. CHAMBERLAIN (when his name was called). I am paired with the junior Senator from Pennsylvania [Mr. OLIVER]; but I transfer that pair to the junior Senator from Maryland [Mr. SMITH], and vote. I vote "nay."

Mr. BACON (when Mr. CLAY's name was called). My colleague [Mr. CLAY] is necessarily absent from the city. He is paired, as I understand, with the Senator from Massachusetts [Mr. LODGE]. If my colleague were present, he would vote "nay."

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN], who is absent. I transfer that pair to the senior Senator from Maine [Mr. HALE], and vote. I vote "yea."

Mr. GUGGENHEIM (when his name was called). I have a general pair with the senior Senator from Kentucky [Mr. PAYNTER], who is detained from the Senate by illness. I transfer that pair to the senior Senator from Indiana [Mr. BEVERIDGE] and vote. I vote "yea."

Mr. HUGHES (when his name was called). I am paired with the senior Senator from Oregon [Mr. BOURNE]. If he were present, I should vote "nay."

Mr. JONES (when his name was called). I have a pair with the junior Senator from South Carolina [Mr. SMITH]. I transfer that pair to the junior Senator from Wisconsin [Mr. STEPHENSON] and vote. I vote "yea."

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY]. I transfer that pair to my colleague [Mr. CRANE], who would vote "yea" if present, and the Senator from Georgia would vote "nay." I vote "yea."

Mr. MCLAURIN (when his name was called). I have a pair with the junior Senator from Michigan [Mr. SMITH]. I transfer that pair to the senior Senator from North Carolina [Mr. SIMMONS], and vote. I vote "nay."

Mr. OVERMAN (when Mr. SIMMONS's name was called). I desire to announce that my colleague [Mr. SIMMONS] is unavoidably absent. He is paired with the junior Senator from Michigan [Mr. SMITH]. If my colleague were present, he would vote "nay."

Mr. RAYNER (when the name of Mr. SMITH of Maryland was called). My colleague [Mr. SMITH] is absent on account of serious sickness in his family. He is paired with the junior Senator from Pennsylvania [Mr. OLIVER].

The roll call was concluded.

Mr. DAVIS. My colleague [Mr. CLARKE] has been detained from the Chamber for several days on account of the very critical illness of his son. He is paired with the junior Senator from Delaware [Mr. RICHARDSON]. If my colleague were present, he would vote "nay."

Mr. BAILEY. I desire to announce that the Senator from South Carolina [Mr. TILLMAN] is unavoidably absent, but that if he were present he would vote "nay."

The result was announced—yeas 45, nays 31, as follows:

YEAS—45.

Aldrich	Cullom	Guggenheim	Perkins
Bradley	Curtis	Heyburn	Piles
Brandegee	Depew	Johnson, N. Dak.	Root
Briggs	Dick	Jones	Scott
Brown	Dillingham	Kean	Smoot
Burkett	Dixon	Lodge	Sutherland
Burnham	du Pont	Lorimer	Warner
Burrows	Elkins	McCumber	Warren
Burton	Flint	Nelson	Wetmore
Carter	Frye	Nixon	
Clark, Wyo.	Gallinger	Page	
Crawford	Gamble	Penrose	

NAYS—31.

Bacon	Culberson	Gore	Overman
Bailey	Cummins	Johnston, Ala.	Owen
Bankhead	Daniel	La Follette	Rayner
Borah	Davis	McEnery	Shively
Bristow	Dolliver	McLaurin	Stone
Bulkeley	Fletcher	Martin	Taliaferro
Chamberlain	Foster	Money	Taylor
Clapp	Frazier	Newlands	

NOT VOTING—16.

Beveridge	Crane	Paynter	Smith, Mich.
Bourne	Hale	Richardson	Smith, S. C.
Clarke, Ark.	Hughes	Simmons	Stephenson
Clay	Oliver	Smith, Md.	Tillman

So the amendment of Mr. ALDRICH to the substitute of Mr. LODGE was agreed to.

Mr. BACON. Is the amendment which I propose to offer now in order?

Mr. ALDRICH. I ask that the amendment be stated.

The VICE-PRESIDENT. The Secretary will state the amendment.

Mr. BACON. The amendment I wish to offer is not in writing.

The VICE-PRESIDENT. Then, will the Senator please state it, so that the Chair can understand it?

Mr. BACON. If the Chair will take the amendment of the Senator from Rhode Island, I will indicate it.

The VICE-PRESIDENT. The Chair has that.

Mr. BACON. The amendments are four in number, but all of them relate to the same subject-matter.

Mr. ALDRICH. Mr. President, does the Senator propose to amend the text of the amendment that has just been agreed to?

Mr. BACON. Yes.

Mr. ALDRICH. I suggest that that is not in order.

The VICE-PRESIDENT. The Chair will have to hold that that is not in order.

Mr. BACON. But, Mr. President, we certainly have the right at some time to do this. That is the reason why I made the tender of the amendment before the vote was taken. It is absolutely inconsistent with any rule of parliamentary law that the Senator——

Mr. ALDRICH. The Senator will have a right to offer this amendment in the Senate when the bill reaches there.

Mr. BACON. If it is in order in the Senate, it is in order now, just the same.

Mr. ALDRICH. Oh, no!

The VICE-PRESIDENT. The Chair thinks not.

Mr. BACON. I am content if the Senator will recognize that it will be in order then. I will not split hairs with him as to when it is most in order. If I have an opportunity to offer it, that will be sufficient for me.

I now have another amendment to offer. As I understand, the question now before the Senate is on the substitute offered by the Senator from Massachusetts as it has been amended?

The VICE-PRESIDENT. That is correct.

Mr. BACON. And I desire to insert certain words as an amendment. In line 6, after the word "Government," on the first page, I move to insert the words "other than crude or refined petroleum." I desire to state that the effect of the substitute as amended, so far as crude and refined petroleum is concerned, is to put it right back where it was under the Dingley bill and make it in fact a subject of duty, rather than on the free list, as the Senate has indicated its purpose that it should be.

The VICE-PRESIDENT. The Senate will please be in order.

Mr. BACON. It is extremely difficult, Mr. President, to talk under these circumstances.

The VICE-PRESIDENT. The Chair realizes that, and the Chair hopes that the Senate will be in order.

Mr. BACON. It imposes upon the speaker an unnecessary amount of physical exertion.

The VICE-PRESIDENT. If the Senator from Georgia will suspend, the Chair will obtain order before he need proceed. Will all Senators cease conversation, and will Senators please be seated?

Mr. BAILEY. I presume, Mr. President——

The VICE-PRESIDENT. The Senator from Georgia has the floor. Does he yield to the Senator from Texas?

Mr. BACON. I do.

Mr. BAILEY. I assume that the purpose of that amendment was not to defeat what the Senate had already done with respect to petroleum, but merely to preserve a parliamentary status. And in order that we may settle this free from the other questions, I suggest that the Senator from Massachusetts withdraw his substitute and let us take a vote on the direct question between the proposition of the Senator from Rhode Island and the proposition of the Senator from Iowa and myself.

Mr. ALDRICH. Mr. President, if the Senate will agree to take the vote at once, without further discussion, I shall be very glad to do that.

Mr. BAILEY. I hope that agreement will be made; because, if it is not, this will be made the means of putting oil back on the dutiable list. I hope no objection will be made to my suggestion.

Mr. ALDRICH. Mr. President, I ask unanimous consent that that be done.

The VICE-PRESIDENT. The Chair would like to know what is the request of the Senator from Texas. The Chair understands that the Senator puts that in the form of a request for unanimous consent?

Mr. BAILEY. I request unanimous consent that the Senator from Massachusetts shall be permitted to withdraw his substitute, and that the Senate shall then proceed to a direct vote between the motion of the Senator from Rhode Island and the amendment offered by the Senator from Iowa and myself.

The VICE-PRESIDENT. Is there objection to the request? The Chair hears none.

Mr. LODGE. Mr. President, under that unanimous request, I withdraw the substitute which I offered.

Mr. ALDRICH. And I offer the amendment which has just been voted on as a substitute for the amendment of the Senator from Texas.

The VICE-PRESIDENT. That is the pending question. The question now is on agreeing to the substitute.

Several SENATORS. Let us have the yeas and nays.

The yeas and nays were ordered.

Mr. BACON. Mr. President, I have certain amendments which I desire to offer to the amendment of the Senator from Rhode Island; but I am perfectly willing to postpone them until afterwards, if I may offer them then, in order that we may have this vote.

Mr. ALDRICH and others. Question!

Mr. LODGE. Mr. President——

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. The Senator from Georgia has the floor. To whom does he yield?

Mr. ALDRICH. The unanimous consent was that we proceed to vote at once upon this proposition.

Mr. BACON. Go ahead and vote.

Mr. BULKELEY. Mr. President, I should like to know what the question is.

The VICE-PRESIDENT. The question is on the substitute of the Senator from Rhode Island for the amendment of the Senator from Texas; and upon that the yeas and nays have been ordered.

The Secretary proceeded to call the roll.

Mr. CHAMBERLAIN (when his name was called). I desire to make the same announcement I have heretofore made with reference to my pair. I transfer my pair, and I vote "nay."

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN], who is absent. I transfer that pair to the senior Senator from Maine [Mr. HALE], and I vote "yea."

Mr. GUGGENHEIM (when his name was called). Mr. President, I again announce my pair with the senior Senator from Kentucky [Mr. PAYNTER]. I transfer that pair to the senior Senator from Indiana [Mr. BEVERIDGE], and I vote "yea."

Mr. HUGHES (when his name was called). I am paired with the senior Senator from Oregon [Mr. BOURNE]. If he were present, I should vote "nay."

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY]. I transfer that pair to my colleague [Mr. CRANE]. My colleague, if present, would vote "yea," and the Senator from Georgia would vote "nay." I vote "yea."

Mr. McLAURIN (when his name was called). I transfer my pair with the junior Senator from Michigan [Mr. SMITH] to the senior Senator from North Carolina [Mr. SIMMONS] and vote "nay."

Mr. OVERMAN (when Mr. SIMMONS's name was called). I desire to announce again the unavoidable absence of my colleague [Mr. SIMMONS]. He is paired with the junior Senator from Michigan [Mr. SMITH]. If my colleague were present, he would vote "nay."

The roll call was concluded.

Mr. JONES. I am paired with the Senator from South Carolina [Mr. SMITH]. I transfer that pair to the Senator from Wisconsin [Mr. STEPHENSON] and vote "yea."

Mr. DAVIS. I again announce the unavoidable detention of my colleague [Mr. CLARKE of Arkansas], and his pair with the Senator from Delaware [Mr. RICHARDSON].

The result was announced—yeas 45, nays 31, as follows:

YEAS—45.

Aldrich	Cullom	Guggenheim	Perkins
Bradley	Curtis	Heyburn	Piles
Brandegee	Depew	Johnson, N. Dak.	Root
Briggs	Dick	Jones	Scott
Brown	Dillingham	Kean	Smoot
Burkett	Dixon	Lodge	Sutherland
Burnham	du Pont	Lorimer	Warner
Burrows	Elkins	McCumber	Warren
Burton	Flint	Nelson	Wetmore
Carter	Frye	Nixon	
Clark, Wyo.	Gallinger	Page	
Crawford	Gamble	Penrose	

NAYS—31.

Bacon	Culberson	Gore	Overman
Bailey	Cummins	Johnston, Ala.	Owen
Bankhead	Daniel	La Follette	Rayner
Borah	Davis	McEnery	Shively
Bristow	Dolliver	McLaurin	Stone
Bulkeley	Fletcher	Martin	Taliaferro
Chamberlain	Foster	Money	Taylor
Clapp	Frazier	Newlands	

NOT VOTING—16.

Beveridge	Crane	Paynter	Smith, Mich.
Bourne	Hale	Richardson	Smith, S. C.
Clarke, Ark.	Hughes	Simmons	Stephenson
Clay	Oliver	Smith, Md.	Tillman

So Mr. ALDRICH's substitute for Mr. BAILEY's amendment was agreed to.

Mr. ALDRICH. I ask that the amendment as amended be now agreed to, and upon that I demand the yeas and nays.

The VICE-PRESIDENT. The Senator from Rhode Island demands the yeas and nays upon agreeing to the amendment as amended.

Mr. BACON. I offer an amendment to the amendment.

Mr. ALDRICH. I ask that the question be taken first.

Mr. BACON. I have the floor with an amendment.

The VICE-PRESIDENT. The Senator from Georgia is demanding the floor.

Mr. ALDRICH. I had not yielded the floor.

The VICE-PRESIDENT. The Senator from Rhode Island had not yielded the floor.

Mr. ALDRICH. I demand the yeas and nays on agreeing to the amendment as amended.

The VICE-PRESIDENT. Is the demand seconded?

Mr. BACON. Mr. President——

The yeas and nays were ordered.

Mr. BACON. I do most certainly object to be taken off the floor.

The VICE-PRESIDENT. The Senator from Georgia was on the floor and demanded recognition. The demand for the yeas and nays by the Senator from Rhode Island could not be prevented.

Mr. BACON. When debate is desired to be continued?

The VICE-PRESIDENT. The Senator from Georgia is now recognized.

Mr. BACON. I offer this amendment to the substitute as it has been adopted.

The VICE-PRESIDENT. The Secretary will read the proposed amendment to the amendment.

The SECRETARY. It is proposed to insert at the conclusion of the first paragraph of section 4:

Provided, That the provisions of this section shall not apply to any corporation or association organized and operated for religious, charitable, or educational purposes, no part of the profit of which inures to the benefit of any private stockholder or individual, but all of the profit of which is in good faith devoted to the said religious, charitable, or educational purpose;

Provided further, That the provisions of this section shall not apply to incorporations or associations of fraternal orders or organizations designed and operated exclusively for mutual benefit or for the mutual assistance of its members;

Provided further, That the provisions of this section shall not apply to any insurance or other corporations or associations organized and operated exclusively for the mutual benefit of its members in which there are no joint-stock shares entitled to dividends or individual profit to the holders thereof.

Provided further, That the provisions of this section shall not apply to any corporation or association designed and operated solely for mercantile business the gross sales of which do not exceed $250,000 per annum.

Mr. ALDRICH. As I have already stated to the Senator from Nebraska [Mr. BURKETT], who had an amendment which is somewhat similar to one of these provisos, the committee will consider carefully the exemptions which ought to be made, if any, in addition to those which are included in the bill. It is impossible to make those exemptions intelligently with these matters before the Senate. I therefore feel constrained, having in view the action of the committee which I have expressed, to move to lay the amendment to the amendment on the table, and I shall follow that by moving to lay all amendments to the pending section on the table.

Mr. BACON. Mr. President, I take it that no Senator——

Mr. ALDRICH. I move to lay the amendment on the table.

Mr. BACON. If the Senator from Rhode Island proposes when an amendment is offered by a Senator to make a speech against it and then moves to table it before the mover of the amendment is heard——

Mr. ALDRICH. I did not intend to make any speech.

Mr. BACON. The Senator did make it.

Mr. ALDRICH. I simply stated that the committee would take into consideration additional exemptions which ought to be made, if any; and I stated further that it was impossible to consider the amendment intelligently in this way. The Senator from Nebraska has an amendment which is in the same line, and I had already stated that before the bill passes from the consideration of the Senate I propose to have it carefully considered by the committee.

Mr. BACON. I think we have had about enough legislation by the committee, and I think the Senate ought to legislate.

The VICE-PRESIDENT. The Senator from Georgia has moved an amendment, and the Senator from Rhode Island has moved to lay it on the table.

Mr. BACON. The Senator made a statement against the amendment——

Mr. ALDRICH. If the Senator desires it, and if he thinks I have treated him unfairly, I am willing to allow him to make a statement, but I shall then insist on the motion.

Mr. BACON. I am not here to have anything allowed to me by the Senator from Rhode Island. He has been dictating to the Senate long enough for him to adopt language of that kind.

Mr. LODGE. All debate is out of order.

Mr. BACON. I want the Senator to understand that he has no greater right here than any other Member.

The VICE-PRESIDENT. Debate is not in order. The question is on agreeing to the motion of the Senator from Rhode Island to lay the amendment of the Senator from Georgia on the table.

Mr. BACON. On that I call for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CHAMBERLAIN (when his name was called). I desire to make the same announcement I did with reference to the previous vote and the transfer of my pair. I vote "nay."

Mr. DILLINGHAM (when his name was called). I again announce my general pair with the senior Senator from South Carolina [Mr. TILLMAN]. I transfer my pair to the senior Senator from Maine [Mr. HALE]. I vote "yea."

Mr. GUGGENHEIM (when his name was called). I make the same announcement I did on the previous vote. I vote "yea."

Mr. HUGHES (when his name was called). I again announce my pair with the senior Senator from Oregon [Mr. BOURNE]. If he were present, I should vote "nay."

Mr. JONES (when his name was called). I again announce my pair with the junior Senator from South Carolina [Mr. SMITH]. I transfer that pair to the Senator from Wisconsin [Mr. STEPHENSON]. I vote "yea."

Mr. LODGE (when his name was called). I am paired with the Senator from Georgia [Mr. CLAY]. I transfer that pair to my colleague [Mr. CRANE], and vote "yea."

Mr. McLAURIN (when his name was called). I transfer my pair with the junior Senator from Michigan [Mr. SMITH] to the senior Senator from North Carolina [Mr. SIMMONS], and vote "nay."

Mr. OVERMAN (when Mr. SIMMONS's name was called). I again announce that my colleague [Mr. SIMMONS] is unavoidably absent, and is paired with the junior Senator from Michigan [Mr. SMITH]. If present, my colleague would vote "nay." I make this announcement for the day. I will not make it any more.

The roll call having been concluded, the result was announced—yeas 42, nays 32, as follows:

YEAS—42.

Aldrich	Curtis	Guggenheim	Perkins
Bradley	Depew	Heyburn	Piles
Brown	Dick	Johnson, N. Dak.	Root
Burkett	Dillingham	Jones	Scott
Burnham	Dixon	Kean	Smoot
Burrows	du Pont	Lodge	Sutherland
Burton	Elkins	Lorimer	Warner
Carter	Flint	McCumber	Warren
Clark, Wyo.	Frye	Nelson	Wetmore
Crawford	Gallinger	Page	
Cullom	Gamble	Penrose	

NAYS—32.

Bacon	Clapp	Frazier	Newlands
Bailey	Culberson	Gore	Overman
Bankhead	Cummins	Johnston, Ala.	Owen
Borah	Daniel	La Follette	Rayner
Brandegee	Davis	McEnery	Shively
Bristow	Dolliver	McLaurin	Stone
Bulkeley	Fletcher	Martin	Taliaferro
Chamberlain	Foster	Money	Taylor

NOT VOTING—18.

Beveridge	Crane	Paynter	Smith, S. C.
Bourne	Hale	Richardson	Stephenson
Briggs	Hughes	Simmons	Tillman
Clarke, Ark.	Nixon	Smith, Md.	
Clay	Oliver	Smith, Mich.	

So Mr. BACON's amendment to the amendment was laid on the table.

Mr. BACON. I have an amendment, which I send to the desk and which I now offer.

The VICE-PRESIDENT. The Secretary will read the amendment.

The SECRETARY. At the conclusion of the amendment insert the following, to be known as paragraph 9:

Paragraph 9. That every corporation, joint-stock company and association, and every person in the United States holding the bonds, debentures, or other evidences of indebtedness of any corporation or association organized under the laws of either the United States or of any State or Territory of the United States shall, upon the right to hold and possess said bonds and to collect the principal and interest of said bonds, be subject to pay annually a special excise tax equivalent to 2 per cent upon the annual interest payable upon said bonds.

That every corporation, joint-stock company and association having outstanding bonds upon which interest is payable annually, semiannually, or quarterly, or at less intervals of time, shall on the 1st day of October of each year make out and transmit to the collector of internal revenue for the district in which said corporation, company, or association shall be situated a report of the said outstanding bonds, the denominations of said bonds, the aggregate amount of the same, the rate of interest payable on the same, and the dates when said interest is due and payable, which report shall be transmitted forthwith by the collector to the Commissioner of Internal Revenue. It shall further be the duty of every such corporation, company, and association when such interest becomes due and payable to deduct and retain the proportion of said amount payable to each of the holders of said bonds, the amount of excise tax payable by said bondholder under the provisions of this section, and to thereafter pay the same to the said collector of internal revenue under the rules and regulations which shall be prescribed by the Commissioner of Internal Revenue; and the receipt of the said collector of internal revenue for the said amounts thus paid to him by said corporation, company, or association shall be received by said bondholder, to the extent named therein, in payment of the amount due upon the bond or bonds so held by him.

Mr. BACON. Mr. President, I do not desire to discuss this matter at any length. It is too late in the evening to do so. I will just say one word.

One great objection to the amendment offered by the Senator from Rhode Island, representing his committee, is the fact that it does not go far enough. The tax which is proposed reaches only a very small part of the particular class of wealth which it is designed to tax for the purpose of raising this needed revenue. I say needed revenue. It seems there is a division of opinion upon that subject.

The Senator from Rhode Island still insists that no additional revenue is needed. Other Senators have at considerable length and in some detail, the Senator from Iowa [Mr. CUMMINS] especially, endeavored to show that a very large increase of revenue is needed. The desire to reach the bonded interests of the country would be very much more generally shared by the people at large than the desire to reach simply the stocks of corporations. The excise tax in the various cases where it has been imposed has been a tax upon a privilege or a right, or upon the exercise of certain business.

It may be, Mr. President, that when we get in the Senate we may have something more to say upon this subject, but it is sufficient now to say that the ground upon which I base this amendment is that if a privilege can be taxed as an excise tax, a legal right can also be the basis for an excise tax, and the right to hold bonds is as legitimate a subject-matter of taxation as a right to exercise the business through the exercise of which these bonds are to be ultimately paid in the hands of the bondholders.

I endeavored to point out in the colloquy which I had with the Senator from New York [Mr. ROOT] last night one of the radical defects in this proposed measure. It is that even as to the stocks of corporations, the dividends upon which would be the measure of the excise tax, if there is no tax to be paid on the right to hold bonds, it is within the power of these corporations to convert their stocks very largely into bonds and then to use the same money theretofore paid in dividends and which would be practically taxable as earnings in the payment of interest on bonds, which under the present bill would not be available as a subject of taxation. Thus to the extent that a corporation converted its stock into bonds it would escape this excise tax.

The Senator from New York said in response to that suggestion from me that the measure limits the amount of bonds to be considered in calculating the exemption to the amount of paid-up capital, and that, therefore, there could not be the successful conversion of capital stock into bonds if the bonds already equaled the paid-up capital. Without going into any elaboration of that, I will simply point out that, as an illustration, if I am correctly informed and accurate in my recollection, the steel trust has stock of somewhere in the neighborhood of a thousand million dollars and a bonded indebtedness of half that amount. It is a simple matter when this bill becomes a law to convert $250,000,000 of that stock into an equivalent amount of bonds, and thus escape the taxation of $250,000,000. If, however, the right to hold bonds is a taxable right, one which can be taxed under the exercise of the excise power, then the effort to convert the stock of corporations into bonds, and thus escape the tax contemplated by this section of the bill, will be defeated.

That is all I care to say upon this subject at the present time.

Mr. ALDRICH. I move to lay the amendment of the Senator from Georgia to the amendment on the table.

Mr. BACON. Upon that I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE-PRESIDENT. The question is on laying upon the table the amendment of the Senator from Georgia to the amendment. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. CHAMBERLAIN (when his name was called). I am paired with the junior Senator from Pennsylvania [Mr. OLIVER]; but I transfer that pair to the junior Senator from Maryland [Mr. SMITH], and vote. I vote "nay."

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN], who is absent. I transfer that pair to the senior Senator from Maine [Mr. HALE], and vote. I vote "yea."

Mr. GUGGENHEIM (when his name was called). I have a general pair with the senior Senator from Kentucky [Mr. PAYNTER], who is detained from the Senate by illness. I transfer that pair to the senior Senator from Indiana [Mr. BEVERIDGE], and vote. I vote "yea."

Mr. JONES (when his name was called). I again announce my pair with the junior Senator from South Carolina [Mr. SMITH]. I transfer that pair to the junior Senator from Wisconsin [Mr. STEPHENSON], and vote. I vote "nay."

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY]. I transfer that pair to my colleague [Mr. CRANE], who would vote "yea," if present, and the Senator from Georgia would vote "nay." I vote "yea."

Mr. McLAURIN (when his name was called). I have a general pair with the junior Senator from Michigan [Mr. SMITH]. I transfer that pair to the Senator from North Carolina [Mr. SIMMONS], and vote. I vote "nay."

The roll call was concluded.

Mr. BACON. I desire to state, in connection with the announcement made of the pair of my colleague [Mr. CLAY], that if he were present he would vote "nay" on this vote. I should have made the same announcement as to the previous votes.

Mr. LODGE. I have made that announcement on every vote, I think.

Mr. BACON. I beg the Senator's pardon. I did not understand that.

Mr. LODGE. I stated that the Senator from Georgia [Mr. CLAY] would vote "nay," and that my colleague [Mr. CRANE] would vote "yea," if present.

Mr. BACON. That is sufficient.

The result was announced—yeas 41, nays 34, as follows:

YEAS—41

Aldrich	Clark, Wyo.	Gallinger	Perkins
Bradley	Cullom	Guggenheim	Root
Brandegee	Curtis	Heyburn	Scott
Briggs	Depew	Johnson, N. Dak.	Smoot
Brown	Dick	Kean	Sutherland
Bulkeley	Dillingham	Lodge	Warner
Burkett	Dixon	Lorimer	Warren
Burnham	du Pont	McCumber	Wetmore
Burrows	Elkins	Nelson	
Burton	Flint	Page	
Carter	Frye	Penrose	

NAYS—34.

Bacon	Cummins	Johnston, Ala.	Owen
Bailey	Daniel	Jones	Piles
Bankhead	Davis	La Follette	Rayner
Borah	Dolliver	McEnery	Shively
Bristow	Fletcher	McLaurin	Stone
Chamberlain	Foster	Martin	Taliaferro
Clapp	Frazier	Money	Taylor
Crawford	Gamble	Newlands	
Culberson	Gore	Overman	

NOT VOTING—17.

Beveridge	Hale	Richardson	Stephenson
Bourne	Hughes	Simmons	Tillman
Clarke, Ark.	Nixon	Smith, Md.	
Clay	Oliver	Smith, Mich.	
Crane	Paynter	Smith, S. C.	

So Mr. BACON's amendment to the amendment was laid on the table.

Mr. BURKETT. Mr. President, some days ago I offered an amendment intended to be proposed by me. I do not care to ask to have it considered this evening; but I shall ask that it be printed in the RECORD, and that it be referred to the Committee on Finance in charge of this bill. I will say that when I offered the amendment I simply asked to have it lie on the table until the proper time arrived for its consideration. I shall not ask for a vote upon it to-night.

The VICE-PRESIDENT. In the absence of objection, the amendment will be printed in the RECORD.

The amendment referred to is as follows:

At the end of line 14, page 2, strike out the period and insert a colon and the words:

"*Provided, however,* That nothing in this section contained shall apply to fraternal beneficiary societies, orders, or associations operating under the lodge system, including labor organizations, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members."

Mr. CLAPP. Mr. President, I have a substitute which I desire to offer. I shall be very brief. It is a reproduction of the amendment introduced by the Senator from Rhode Island [Mr. ALDRICH], with the exception that it strikes out all the provisions of the amendment which exempt a corporation from paying the tax where the income is derived from dividends upon the stock of other companies subject to taxation.

Mr. ALDRICH. I would suggest to the Senator from Minnesota that the amendment is not now in order.

Mr. CLAPP. It strikes me the Senator from Massachusetts [Mr. LODGE] having withdrawn his amendment, that leaves the amendment of the Senator from Rhode Island, as he announced, a committee amendment, and it can be perfected by this amendment.

The VICE-PRESIDENT. It can be perfected by adding thereto, but not by striking out. The Senate has just voted the amendment in. An amendment to add to it is in order, but not an amendment to strike out any part of it.

Mr. CLAPP. I am not particular about it. As suggested, it will be in order in the Senate. It is getting late anyway, and I will not press it now.

The VICE-PRESIDENT. The Senator from Minnesota, then, withdraws his amendment.

Mr. DICK. Mr. President, I send to the Secretary's desk an amendment, which I ask to have printed in the RECORD for future consideration. It is for the purpose of exempting building and loan associations from the operation of this act.

Mr. ALDRICH. I suggest to the Senator from Ohio that he have the amendment referred to the Committee on Finance.

Mr. DICK. Then, I ask, as suggested by the Senator from Rhode Island, that the amendment be referred to the Committee on Finance.

The VICE-PRESIDENT. Without objection, the request will be complied with.

The amendment referred to is as follows:

In the new section, on page 2, line 14, after the word "imposed," insert the words: "*Provided, however,* That for the purposes of this act building and loan associations shall not be deemed corporations for profit."

Mr. BULKELEY. I desire to offer an amendment to the pending amendment at the end of line 9, and I ask that it be printed in the RECORD.

The VICE-PRESIDENT. In line 9, at what point?

Mr. FLINT. On what page?

Mr. BULKELEY. On the first page.

The VICE-PRESIDENT. The amendment may be printed, in the absence of objection, but the amendment can not be received at this time. Does the Senator simply offer it to be printed for information?

Mr. BULKELEY. No, sir; I ask to have it printed in the RECORD; and I shall call it up at the first opportunity.

The VICE-PRESIDENT. There is no objection, the Chair presumes, on the part of the Senate to have the amendment printed in the RECORD, but it can not be received as an amendment offered, as it is not now in order.

Mr. BULKELEY. I ask that the amendment may be printed in the RECORD.

The VICE-PRESIDENT. Without objection, the amendment will be printed in the RECORD.

The amendment referred to is as follows:

After line 9, on page 1, insert:

"Except mutual insurance companies or corporations, and companies or corporations transacting business upon the mutual plan for the benefit of its mutual policy holders."

The VICE-PRESIDENT. The question is on agreeing to the amendment as amended.

Mr. BACON. Mr. President, I want to say a few words in regard to that matter. Some twelve years ago, when the Dingley bill was before the Senate, I voted for an amendment very similar to this, but more carefully guarded. As I favor the principle involved, I shall not vote against this amendment, but I want it put in more proper shape before I vote for it. I am in favor of taxing corporations, but I am also in favor of taxing other accumulated wealth as well as corporations, such as bonds, and so forth. I should now vote for this amendment, if it were properly guarded according to my view of it. If the amendments offered by me, which cared for religious, benevolent, charitable, and educational institutions were adopted; if the amendment were properly guarded as to fraternal orders, which have organizations in which there is profit made, but in which there is no individual profit, where the profit is made solely and entirely for the mutual benefit and assistance of the members of those orders; if mutual insurance companies, which have no stock and which are intended simply for the mutual benefit of those who are insured and who are interested in the corporation, were properly cared for; if there were proper exemptions of the thousands of mercantile houses which have been organized as corporations; if the provision which would sanction the holding of stock by one corporation of other corporations were not in it; and if we had had the opportunity, which I think we were entitled to, to vote, first, upon the question of the income tax, and that had been defeated, I should now vote for this amendment. As it is, while I shall in the end vote for it, if it is put in proper shape, it is now not in proper shape, and therefore while not voting against it, I shall at this time refrain from voting upon it.

Now, Mr. President, it is said that we are to have opportunity to vote on the income tax when in the Senate. It is manifestly improper to call upon us to vote for this amendment and give our sanction to it before we have the opportunity to vote for the income-tax amendment in the Senate. Therefore, Mr. President, when the bill comes finally before the Senate and I have the opportunity to see how far the Senator from Rhode Island carries out the promise which he has made as to guarding the provisions affecting benevolent, charitable, religious, and fraternal orders, and mutual associations, and incorporated mercantile establishments, if it is put in shape in these regards, I will vote for it.

I particularly protest, however, that it is not proper parliamentary procedure to endeavor to force us to first vote on this amendment under a device which was given out to the public as intended for the purpose of preventing a vote on the income tax, which was given out as a great parliamentary achievement on the part of the Senator from Massachusetts and the Senator from Rhode Island, that they had so shaped matters that we would be compelled to vote upon the corporation-tax amendment before we were allowed to vote on the question of the income tax. This amendment is avowed by the Senator from Rhode Island to be intended to defeat the income tax. If so, we should have opportunity to vote first on the income-tax amendment. Therefore, Mr. President, I shall ask to be excused from voting at this time, and I shall wait until I have the opportunity to vote on the income-tax proposition before I vote on the corporation-tax proposition, which I trust will by that time be cured of its present objectionable features relative to religious, educational, charitable, and fraternal associations and the other features embraced in my amendment.

Mr. HEYBURN. Mr. President, before I cast my vote, I desire to say that I do it in vindication of what I believe to be the principles of the Republican party which we represent. I have confidence that the schedules which we have passed upon will provide the revenue necessary for the purposes of the Government; and I do not propose to vote for any "fancy legislation," if I may so term it—and I do not do it in disrespect of any other Senator's wishes—until I am satisfied that the protective tariff policy, represented by the schedules which we have passed upon, is insufficient to provide adequate revenue. I shall therefore be compelled to vote against any measure looking to the providing of revenue in addition to that until I am shown that it is necessary.

Mr. DAVIS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Arkansas?

Mr. HEYBURN. I yield the floor.

Mr. DAVIS. The Senator from Idaho suggests that he casts his vote in obedience to the principles of the Republican party, believing that the schedules adopted will raise sufficient revenue. I desire to say to him that if they fail, then we can adopt the other Republican policy of issuing bonds.

Mr. BULKELEY. Mr. President, I desire at this time to ask unanimous consent to have inserted in the RECORD the document which I hold in my hand, which covers the rates of taxation imposed by the several States and Territories of the United States upon life insurance companies under the laws in effect on June 1, 1909. I will not detain the Senate by reading it, but I ask that it be inserted in the RECORD.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Connecticut? The Chair hears none.

The matter referred to is as follows:

Rates of taxation imposed by the several States and Territories of the United States upon foreign life insurance companies under laws in effect on June 1, 1909, compared with the rates imposed in 1871.

	1871.[a]	1909.
Alaska		No tax.
Alabama	2 per cent and local	2 per cent on gross premiums and local premium tax in two cities.
Arizona	Nothing	2 per cent on gross premiums.
Arkansas	Local	2½ per cent on premiums, less policy claims, including death losses, endowments, and commissions.
California	1 per cent	1 per cent on gross premiums.
Colorado	1 per cent and local	2 per cent on gross premiums.
Connecticut	2 per cent	Reciprocal tax only.
Delaware	2½ per cent	2 per cent on gross premiums.
District of Columbia	1 per cent	1½ per cent on premiums, less dividends.
Florida	Nothing	2 per cent on gross premiums.
Georgia	1 per cent and local	1 per cent on gross premiums and local tax in four cities.
Hawaii	Nothing	2 per cent on premiums, less return premiums, reinsurance, death losses, all other payments to policy holders, and actual operating and business expenses.
Idaho	Nothing	2 per cent on premiums less policy claims.
Illinois	Reciprocal	Reciprocal tax only.
Indiana	Nothing	3 per cent on premiums less death losses only.
Iowa	Reciprocal	2½ per cent on gross premiums.
Kansas	2 per cent	2 per cent on gross premiums.
Kentucky	2½ per cent	2 per cent on gross premiums and local tax in two cities.
Louisiana	1 per cent	1/10 per cent (about) graded license tax based on gross premiums, this tax being duplicated in city of New Orleans.
Maine	Nothing	1½ per cent on gross premiums.
Maryland	do	Do.
Massachusetts	Reciprocal	¼ per cent on reserves.
Michigan	3 per cent and local	2 per cent on gross premiums.
Minnesota	2 per cent	Do.
Mississippi	Nothing	2 per cent on first year gross premiums and 1/10 per cent on renewals since 1902.
Missouri	Reciprocal	2 per cent on gross premiums.
Montana	Nothing	2½ per cent gross on first $5,000 of premiums; 2 per cent on balance; and local county taxes.
Nebraska	Local	2 per cent on gross premiums.
Nevada	1 per cent	No tax on premiums or reserves.
New Hampshire	do	2 per cent, less death losses, but not less than 1½ per cent.
New Jersey	Reciprocal	Reciprocal tax only.
New Mexico	Nothing	2 per cent on gross premiums.
New York	do	1 per cent on gross premiums.
North Carolina	1 per cent and local	2½ per cent on gross premiums.
North Dakota	Nothing	Do.
Ohio	2 per cent	Do.
Oklahoma	Nothing	2 per cent on gross premiums, less cancellations.
Oregon	do	2 per cent on premiums, less policy claims and dividends to policy holders.
Pennsylvania	3 per cent	2 per cent on gross premiums.
Rhode Island	2 per cent	Do.
South Carolina	Nothing	2 per cent, less dividends and municipal taxes.
South Dakota	Nothing	2½ per cent on gross premiums.
Tennessee	1½ per cent and local	2½ per cent on premiums, less dividends to pay premiums.
Texas	Nothing	1 per cent on gross premiums to companies complying with Robertson law; 3 per cent on gross premiums to companies not complying with the Robertson law.
Utah	do	1½ per cent on premiums, less state taxes on property and dividends.
Vermont	Reciprocal	2 per cent on premiums, less dividends, reinsurance, and return premiums.
Virginia	2 per cent	1 per cent on gross premiums, plus 1/10 per cent toward expenses of insurance department and local tax in one city.
Washington	Nothing	2 per cent on premiums, less amount paid policy holders as returned premiums (not including annuities, annual dividends, endowments, or losses paid).
West Virginia	3 per cent	2 per cent on gross premiums.
Wisconsin	Nothing	Reciprocal tax only.
Wyoming	Local	2½ per cent on gross premiums.

[a] The data with regard to the year 1871 is taken from the proceedings of the first annual meeting of the National Convention of Insurance Commissioners.

ROBERT LYNN COX,
General Counsel and Manager
Association of Life Insurance Presidents.

Mr. BULKELEY. Further, I want to have inserted in the RECORD a statement, which I have had prepared in my own office for my own benefit and for the information of Senators, as to the effect of the corporation-tax amendment on mutual life insurance companies and how the provisions of the amendment are to be construed, if it is enacted into law, as to the deductions that may be made by life insurance companies from their gross income before the tax is levied. Under the provisions of this amendment, the only items especially specified are the necessary expenses of conducting the business, losses actually sustained during the year where they are not covered by insurance, and the additions which have accrued to the reserve fund during the year. These are but a small part of the items of income of a life insurance company, and a large share of that income during any given year is provided for mortuary purposes and for the payment of maturing endowments and various items of that character.

The income, according to this statement, covers about $18,000,000—a large amount of money for a little Connecticut institution. More than half of this sum was disbursed in the way I have indicated, for death claims, for surrender value of policies, and for matured endowments. The items which, as expressed in the amendment, can be deducted from the income of the year, cover comparatively a small amount. While the statement covers a company of which I have the honor to be the president, it reflects conditions which will be found to prevail in every life insurance company in the United States. I ask to have the matter to which I have referred printed in the RECORD.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Connecticut? The Chair hears none.

The matter referred to is as follows:

Ætna Life Insurance Company, Hartford, Conn.

Income, year ending December 31, 1908:			
Life			$13,596,219.44
Accident, health, and life			4,986,123.05
			18,582,342.49
Less deductions as under:			
1. Expenses of management—			
Life	$1,654,424.25		
Accident, health, and life	2,119,824.36		
		$3,774,248.61	
2. Death losses and annuities, life	3,417,548.90		
Matured endowments, life	2,349,739.00		
Surrender values paid in cash, life	1,420,254.81		
	7,187,542.77		
Accident, health, and life	2,277,405.67		
		9,464,948.44	
Increase in reserve—			
Life	2,691,938.00		
Accident, health, and life	225,111.09		
		2,917,049.09	
3. Interest paid on account dividends surrendered		3,176.56	
4. Taxes and fees:			
Life	366,296.53		
Accident, health, and life	80,272.38		
		446,568.91	
5. Dividends on stocks:			
Life	336,389.96		
Accident, health, and life	23,076.00		
		259,465.96	
6. Amount exempt		5,000.00	
Amount of deductions			16,870,457.57
Amount taxable			1,711,884.92
Amount of tax at 2 per cent			34,237.70

EXPLANATORY SHEET.

Life premiums		$10,632,732.31	
Less surrender values	$42,877.87		
Do	1,823.05		
Do	354,638.32		
Consideration for supplementary contracts	34,375.00		
		433,714.24	
			$10,199,018.07
Dividends left with company to accumulate			64,315.68
Interest:			
Mortgage loans	$1,942,760.98		
Collateral loans	63,118.17		
Bonds and stocks	957,315.48		
Premium notes	442,978.19		
Deposits	68,020.41		
Claims paid in advance	3,916.18		
		$3,478,109.41	
Less unearned interest		191,729.97	
			3,286,379.44
Rents			46,506.25
Life income			13,596,219.44
Accident, health, and life premiums		$4,820,195.52	
Less surrender value ten-year return policies		2,926.80	
			4,817,268.72
Interest, accident, health, and life:			
Mortgage loans		97,154.39	
Bonds and stocks		63,276.00	
Deposits		8,264.53	
Other sources		159.41	
			168,854.33
Accident, health, and life income			4,983,123.05
Reserve, life, December 31, 1908		$77,472,139.00	
Special reserve under R. T. contracts		976,848.00	
Present value supplementary contracts not yet due		238,979.00	
			78,687,966.00
Reserve, life, Decmeber 31, 1907		74,879,393.00	
Special reserve under R. T. contracts		884,633.00	
Present value supplementary contracts not yet due		232,002.00	
			75,996,028.00
Increase in life reserve			2,691,938.00
Unearned premiums, accident, health, and life:			
One-year policies or less, December 31, 1908		$1,815,542.11	
More than one year		89,583.82	
Special reserve for unpaid liability losses, December 31, 1908		1,419,600.00	
			3,324,728.93
Unearned premiums, December 31, 1907		1,699,285.99	
Special reserve for unpaid liability losses, December 31, 1907		1,400,331.85	
			3,099,617.84
Increase in accident, health, and life reserve			225,111.09

Mr. BULKELEY. While I am on my feet I desire to say that the companies which I have the honor to speak for in this matter, as I said, I think, once before this afternoon, represent 5,324,322 policy holders, of voting age, or supposed to be, and cover insurance to the amount of $10,404,507,725.

Mr. ALDRICH. Mr. President, I hope the Senator will kindly put this matter into the RECORD and allow us to vote on the proposition to-night. I shall be very glad if he will.

Mr. BULKELEY. I have no objection to putting it into the RECORD, provided I can have an opportunity at some time, either while this bill is in Committee of the Whole or when it comes into the Senate, to express what I started to say now. I do not wish to delay a vote, but I want an opportunity at some time to represent this great industry of the country.

Mr. ALDRICH. The Senator certainly shall have that opportunity.

Mr. BULKELEY. I am satisfied, then, and will conclude by saying that this $10,000,000,000 of insurance does not represent the wealth of the country. On the contrary, the average amount of the policies issued to these 5,000,000 voters of the country is only $1,954.

With that I will conclude for to-night, with the assurance that at some future time I shall have the opportunity to speak at greater length on the subject.

Mr. BACON. Mr. President, I do not understand that the Senator is asking that the matter to which he refers be now put in the RECORD.

The VICE-PRESIDENT. The Chair does not so understand.

Mr. STONE. Mr. President, I do not know that I can ever bring myself to the point of voting for this amendment; certainly not in its present form. The statement made by the Senator from Georgia very well expressed the view I hold, and for the reasons he gave, without detaining the Senate with elaborating them, I shall ask leave to withhold my vote.

Mr. OVERMAN. Mr. President, inasmuch as we are now in Committee of the Whole and not in the Senate, and this amendment was admittedly introduced for the purpose of defeating the Bailey amendment, which I favor, I shall withhold my vote. I am in favor of taxing corporations, and also of taxing wealth. I want all to bear equal burdens.

Hoping that in the Senate the Bailey amendment will be introduced as a substitute for this amendment, I withhold my vote.

Mr. BRISTOW. Mr. President, as I understand, this is a proposition to adopt the corporation tax, which imposes a tax upon mutual life insurance companies and does not give them credit for the payments made on death losses. That is, if there is a mutual life insurance company in Kansas that receives a large amount of money each year as premiums, and the greater part of it is paid out in death losses, the tax is imposed upon the amount received, and the company is not credited with the amount that is paid out for such death losses.

While I have not been able to give very careful attention to that provision, it seems to me it will drive out of business a large number of very worthy institutions in the State that I in part represent. A 2 per cent tax on the entire receipts, not giving those companies credit for the death losses, will certainly put them out of business, and result in the favor of the great life and fire insurance companies that are able to stand the tax.

I also understand that building and loan associations that are organized by citizens for mutual advantage in the various communities are taxed on their gross receipts, the same as if they were running a corporation for profit, though the officers of the associations simply receive salaries for transacting the associations' business, and the expenses are only for rent and the incidental expenses in maintaining the offices. Such an association is not a corporation run for profit, except to the stockholders; and it is mutual only. Yet these building and loan associations, which sustain the same relation to the people of the West that the mutual savings banks do to the people of the East, are to be taxed, while the savings banks are not to be. In voting upon this question, if we vote for it we are approving that kind of treatment of mutual life and fire insurance companies, as well as these home building associations.

Again, as I stated in the few remarks I made this afternoon, this measure imposes a tax upon the small corporations doing a retail or a jobbing business, which can not shift the tax, but in these cases must be borne by the stockholders themselves; while the great corporations, such as the Standard Oil, Steel Corporation, railroads, sugar trust, and so forth, that have a monopoly of the things that they produce or transport, are able to shift the tax and put the burden upon the consumer, or the people, whom these corporations serve; so that the small corporation will bear the burden of the tax, while the large corporation can shift it upon the general public.

These statements have been made and not denied. The provisions to which I have referred will have the effect stated, as has been alleged time and again during this debate. Therefore I can not vote for the measure, because I believe it is unjust, inequitable, discriminatory, and morally wrong; and, when the roll is called, I must cast my vote against it.

The VICE-PRESIDENT. The question is on agreeing to the amendment as amended. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. CHAMBERLAIN (when his name was called). I desire to make the same announcement I have heretofore made with reference to pairs, and vote "nay."

Mr. CLAPP (when his name was called). Mr. President, I have a general pair with the Senator from North Carolina [Mr. SIMMONS]. I have been released by him as to the previous vote. But this vote presents a somewhat different question; and not knowing how he would vote, I feel constrained in his absence to withhold my vote. If he were here, I should vote "nay;" or if a transfer could be arranged, I shall vote "nay."

Mr. DAVIS (when the name of Mr. CLARKE of Arkansas was called). I again desire to announce the absence of my colleague.

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN]. I am advised that were he present he would vote upon this question "yea." Therefore I will vote. I vote "yea."

Mr. GUGGENHEIM (when his name was called). I make the same announcement as on the previous vote, and vote "yea."

Mr. HUGHES (when his name was called). I wish to announce my pair with the senior Senator from Oregon [Mr. BOURNE]. I transfer that pair to the senior Senator from Tennessee [Mr. FRAZIER], and vote "nay."

Mr. JONES (when his name was called). I announce my pair with the junior Senator from South Carolina [Mr. SMITH]. I transfer that pair to the junior Senator from Wisconsin [Mr. STEPHENSON], and I vote "yea."

Mr. LODGE (when his name was called). I have a general pair with the Senator from Georgia [Mr. CLAY], which I transfer to my colleague [Mr. CRANE], and I vote "yea." I think it proper to state that the Senator from Georgia informed me before he went away that on this vote he would vote "yea."

Mr. BACON. I was about to make the same announcement.

Mr. LODGE. And my colleague [Mr. CRANE] would also vote "yea," if he were present.

Mr. McLAURIN (when his name was called). I transfer my pair with the junior Senator from Michigan [Mr. SMITH] to the senior Senator from North Carolina [Mr. SIMMONS], and vote "yea."

The roll call was concluded.

Mr. CLAPP. A transfer having been arranged with my pair, I desire to vote. I vote "nay."

Mr. RAYNER. I desire to announce that my colleague [Mr. SMITH of Maryland] is detained at home by sickness in his family. He is paired with the junior Senator from Pennsylvania [Mr. OLIVER].

The result was announced—yeas 59, nays 11, as follows:

YEAS—59.

Aldrich	Cullom	Gamble	Page
Bailey	Curtis	Guggenheim	Penrose
Bankhead	Daniel	Johnson, N. Dak.	Perkins
Bradley	Davis	Johnston, Ala.	Piles
Brandegee	Depew	Jones	Rayner
Briggs	Dick	Kean	Root
Brown	Dillingham	Lodge	Scott
Burkett	Dixon	Lorimer	Smoot
Burnham	du Pont	McCumber	Sutherland
Burrows	Elkins	McEnery	Taliaferro
Burton	Fletcher	McLaurin	Taylor
Carter	Flint	Martin	Warner
Clark, Wyo.	Foster	Money	Warren
Crawford	Frye	Nelson	Wetmore
Culberson	Gallinger	Newlands	

NAYS—11.

Borah	Chamberlain	Dolliver	La Follette
Bristow	Clapp	Heyburn	Shively
Bulkeley	Cummins	Hughes	

NOT VOTING—22.

Bacon	Frazier	Owen	Smith, S. C.
Beveridge	Gore	Paynter	Stephenson
Bourne	Hale	Richardson	Stone
Clarke, Ark.	Nixon	Simmons	Tillman
Clay	Oliver	Smith, Md.	
Crane	Overman	Smith, Mich.	

So the amendment as amended was agreed to.

The VICE-PRESIDENT. The hour of 7 o'clock having arrived, the Senate stands adjourned until to-morrow, Saturday, July 3, 1909, at 10 o'clock a. m.

SENATE.

SATURDAY, *July 3, 1909.*

The Senate met at 10 o'clock a. m.

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

Mr. McLAURIN presented the petition of Eliza Warnock, of Warren County, Miss., praying that she be granted a pension, which was referred to the Committee on Pensions.

Mr. CULLOM presented a joint resolution of the legislature of Illinois, which was referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

STATE OF ILLINOIS,
DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I, James A. Rose, secretary of state of the State of Illinois, do hereby certify that the following and hereto attached is a true copy of house joint resolution No. 25 of the forty-sixth general assembly of the State of Illinois, filed June 22, 1909, the original of which is now on file and a matter of record in this office.

In testimony whereof, I hereto set my hand and cause to be affixed the great seal of State. Done at the city of Springfield this 1st day of July, A. D. 1909.

[SEAL.] JAMES A. ROSE,
Secretary of State.

House joint resolution 25.

Whereas the rivers and harbors bills passed by the Fifty-ninth Congress provided for the appointment by the Secretary of War of a special board "to examine the Mississippi River below St. Louis and report to the Congress at the earliest date by which a thorough examination can be made upon the practicability and desirability of constructing and maintaining a navigable channel 14 feet deep and of suitable width from St. Louis to the mouth of the river;" and

Whereas this special board has completed this report and forwarded it to the Chief of Engineers in Washington; and

Whereas it is desirable that the information contained in this report shall be made public: Therefore be it

Resolved by the house of representatives (the senate concurring therein), That the general assembly of Illinois petition the House of Representatives of the Congress of the United States of America to take such action as will cause the early publication of the report of the special board of engineers, recently transmitted to the Chief of Engineers, United States Army, upon the improvement of the Mississippi River below St. Louis and particularly between St. Louis and Cairo: Be it further

Resolved, That the secretary of state forward this resolution and petition to the Hon. JOSEPH G. CANNON, Speaker of the National House of Representatives, and send a copy thereof to each Member of Congress from this State.

Adopted by the house May 12, 1909.

EDWARD D. SHURTLEFF,
Speaker of the House.

B. H. MCCANN,
Clerk of the House.

Concurred in by the senate May 18, 1909.

JOHN G. OGLESBY,
President of the Senate.

J. H. PADDOCK,
Secretary of the Senate.

Mr. CULLOM presented a memorial of sundry citizens of Springfield, Ill., indorsing the action of the Senate in imposing a duty on lemons, which was ordered to lie on the table.

THE BEET-SUGAR INDUSTRY.

Mr. DICK. I present a letter, together with certain data, from Truman G. Palmer, concerning the beet-sugar industry of Europe and the United States. I move that the paper be printed as a document (S. Doc. No. 121).

The motion was agreed to.

GOVERNMENT OF PORTO RICO.

Mr. DEPEW, from the Committee on Pacific Islands and Porto Rico, to whom was referred the bill (H. R. 9541) to amend an act entitled "An act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," approved April 12, 1900, reported it without amendment, and submitted a report (S. Rept. No. 10) thereon.

INTRODUCTION OF BILLS.

Mr. DAVIS. I introduce a couple of little local bills that I want unanimous consent for the immediate consideration of. One is a bill to extend the time of limitation. Congress gave permission to build a bridge across the Ouachita River, a navigable stream in my State. The bridge has not yet been completed, and the time is about to expire. The other is a bill to grant permission to construct a bridge across Salem River in Arkansas, near a little town called Warren.

Mr. GALLINGER. Have the bills been reported from the Committee on Commerce?

Mr. DAVIS. No, sir; they are local bills, and it is not necessary to have them referred.

Mr. GALLINGER. They will have to go to the committee, I will say to the Senator.

The VICE-PRESIDENT. The first bill sent to the desk by the Senator from Arkansas will be read by its title.

The bill (S. 2827) to extend the time for construction of a bridge across the Ouachita River at or near Camden, Ark., was read twice by its title.

Mr. DAVIS. I trust the Senator from New Hampshire will at least not ask to have the bill go to the Committee on Commerce, because the time will expire before we can get a report from the committee. It provides for nothing but the extension of time.

Mr. GALLINGER. I suggest to the Senator the rules provide that all bills shall be referred to committees. I feel certain if the Senator will see the chairman of the Committee on Commerce he will report it promptly. It would be a very bad precedent to consider bills without a reference to committees.

Mr. STONE. I would add to what the Senator has said that under the rules of the Committee on Commerce there is a subcommittee authorized to consider local bills, the chairman of which can report at any time.

Mr. GALLINGER. Without the action of the full committee.

Mr. STONE. Without a meeting of the committee.

Mr. GALLINGER. I think the Senator from Arkansas will have no difficulty in getting the bill out of the committee promptly.

The VICE-PRESIDENT. The bill will be referred to the Committee on Commerce.

Mr. DAVIS introduced a bill (S. 2828) to authorize Bradley County, Ark., to construct a bridge across Saline River in said county and State, which was read twice by its title and referred to the Committee on Commerce.